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Report

OF THE CASE OF

THE COMMONWEALTH, *vs.* TENCH COXE, *Esq.*

ON A MOTION

FOR A

MANDAMUS,

IN THE

SUPREME COURT OF PENNSYLVANIA:

TAKEN FROM THE MANUSCRIPT

OF THE

FOURTH VOLUME

OF

MR. DALLAS'S REPORTS.

Published with his Consent.

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1803.

IN THE

SUPREME COURT OF PENNSYLVANIA:

MARCH TERM 1800.

Present, SHIPPEN, *Chief Justice.*

YEATES, SMITH, & BRACKENRIDGE (1) *Justices.*

THE COMMONWEALTH *vs.* TENCH COXE, *Esq.*

IN September term laſt, a rule was obtained, on behalf of a number of perſons, who had aſſociated under the denomination of "The Holland Company," (2) for the purchaſe and ſettlement of lands, lying in the county of Alleghany, north and weſt of the rivers Ohio and Alleghany and weſt of Conewango creek, by which the Secretary of the land office was directed to ſhew cauſe, why a *Mandamus* ſhould not be awarded, commanding him to prepare and deliver patents to the company, for various tracts of land, for which warrants had previouſly iſſued in their favor, under the act of the General Aſſembly, paſſed the 3d of April 1792. (3) The attorney general *(M'Kean) M. Levy, W. Tilghman, & Cooper,* now ſhewed cauſe for diſcharging the rule; and *Lewis, E. Tilghman, Ingerſoll* and *Dallas* argued for making it abſolute. In order, however, to introduce with perſpicuity and advantage, a diſcuſion of the important queſtion involved in this caſe, it is neceſſary to give a general view of the facts and circumſtances, which produced the controverſy.

By the charter granted to William Penn on the 14th March 1681, (4) he became the proprietor of the ſoil embraced within the boundaries of Pennſylvania. The charter title, however, was fortified, as well ſince, as before the revolution, by ſucceſſive purchaſes from

(1) Mr. Juſtice *Brackenridge* having been retained, while he was at the bar, as counſel for the Holland Company, declined taking any part in the deciſion of this cauſe.

(2) For a liſt of the members of this company, their agents &c. ſee the appendix letter A.

(3) See this act, at large, in the appendix letter B.

(4) See 1 vol. ſtate laws in appendix, p. 1. *Dallas's edition.*

the Indians; whoſe claim may be conſidered as fairly and finally extinguiſhed, throughout the territory of the ſtate, by the treaty of Fort Stanwix, on the 23d of October 1784; and the treaty of Fort M'Intoſh, on the 21ſt of January 1785. (5) Independent, too, of the charter, the boundaries of the ſtate have been defined and enlarged, by judicial deciſions, by compact, and by purchaſe. A controverſy on the ſubject early aroſe between the Proprietaries of Pennſylvania and Maryland; which was finally adjuſted in the year 1750, by a decree in the chancery of England, enforcing the ſpecific performance of an agreement, which the parties had entered into in the year 1732. (6) The viſionary and extravagant pretenſions of Connecticut, extending to lands weſtward, as far as the South Sea, began to annoy the peace of Pennſylvania ſo early as the year 1753; (7) and although the rights of ſovereignty and juriſdiction, after much irritation, and conflict, were at laſt, in the year 1782 authoritively decided to belong to the latter ſtate, the intruders under the ſpurious title of Connecticut continue to aſſert a private right of ſoil, over a conſiderable tract of Pennſylvania (8). The legiſlature aims, indeed, by liberal and pacific overtures, to compoſe the feuds in that quarter; but a longer reſiſtance of the authority of our laws, will probably, render unavoidable the application of force (9). The weſtern line of the charter boundary, correſponding with the meanders of the river Delaware, remained undefined by actual ſurvey; and it was, for a while, difficult to aſcertain the limits between the juriſdiction of Pennſylvania and Virginia: but the two ſtates, actuated by a juſt and friendly ſpirit of compromiſe, appointed commiſſioners to run the line of ſeparation; and their report upon the ſubject was adopted and eſtabliſhed in the year 1784 (10). On ſimilar principles the juriſdiction and property of the iſlands in the river Delaware had been ſettled between Pennſylvania and New Jerſey in the year 1783 (11). And in the year 1792 the ſtate completed the preſent range of her territory, by obtaining a formal grant from the United States of a triangular tract of land, bounded by Lake Erie: which tract had been ceded and relinquiſhed by reſolutions of congreſs of the 6th of

(5) For a *reference* to the purchaſes from the Indians, and to the laws reſpecting lands and the land office, ſee 1 vol. p. 5, 39, 248, 503, 891, 908. 2 vol. 21, 201 (*e*) 3 vol. 209. and, generally, the proper titles to the index in *Dallas's edition.*

(6) See *Proud's hiſtory of Pennſylvania*, 1 *vol.* 187. *Caſes in Chancery temp.* Ld. *Hardwicke* 322. *Penn vs Baltimore*, 1 *Vez* 444. *S. C.*

(7) For a hiſtory of the riſe and progreſs of the claim, ſee a pamphlet publiſhed in the year 1774, by Dr. William Smith, the late provoſt of the college of Philadelphia.

(8) For the proceedings, which terminated in the decree of Trenton, ſee the journals of congreſs, for the year 1781, 7 vol. p. 169, 171, &c,

(9) The laws that have been enacted on this ſubject, will be found by referring to the index of the ſeveral volumes of Dallas's edition.

(10) See 2 vol. p. 207.

(11) See 2 vol. p. 143.

June, and 4th of September 1788; and the Indian title was purchaſed, and extinguiſhed by commiſſioners, appointed by the ſtate, in January, 1789.

The ſettlement and cultivation of Pennſylvania, have, at all times, been the favorite objects of her government. The Proprietaries, while the ſoil and juriſdiction were veſted in them reſiſted every attempt of individuals to purchaſe lands from the Indians: but permitted a free acceſs to the land office, or board of commiſſioners, which they inſtituted, either for the purpoſe of obtaining original grants, or for the purpoſe of completing equitable titles, within the territory over which they had themſelves extinguiſhed the Indian claim. The ownerſhip of the unappropriated ſoil, naturally paſſed with the political ſovereignty, from the Proprietaries to the Commonwealth, upon the principles of the Revolution; and accordingly the legiſlature, on the 27th of November 1779, aſſumed the general territorial rights of the Proprietaries; but, at the ſame time, confirmed to them all their private eſtates, and ſuch proprietary tenths or manors, with the rents reſerved on them, as had been ſurveyed and returned into the land office, before the 4th of July 1776: granting alſo a ſum of £130,000 ſterling to the Penn family, as a mark of gratitude for the ſervices of the founder of Pennſylvania (12). This change in the ownerſhip of the ſoil, rendered it neceſſary to provide, under the authority of the ſtate, for pre-exiſting claims to particular tracts of land, taken up and located under the proprietary grants, warrants, and other office rights. With that view excluſively, a land office was opened in the year 1781 (13); and in the enſuing year a Board of Property was inſtituted, with power "to hear and determine in all caſes of controverſy "or caveats in all matters of difficulty, or irregularity, touching eſ- "cheats, warrants on eſcheats, warrants to agree, rights of preemption, "promiſes, imperfect titles, or otherwiſe, which heretofore have or here- "after may ariſe, in tranſacting the buſineſs of the land office." (14) The earlieſt direct appropriations of any of the territory of the ſtate for public uſe, ſubſequent to the revolution, were two proviſions; the firſt for laying off a tract of land, to redeem the depreciation certificates, which had been iſſued to the officers and ſoldiers of the Pennſylvania Line; and the ſecond for laying off another tract of land, to ſatisfy the donation, which had been promiſed to the ſame troops, by a legiſlative vote of the 7th of March 1780; both tracts lying north and weſt of the rivers Ohio and Alleghany, and Conewango creek (15). On the 13th of April 1784, however, the land office was opened, for granting and diſpoſing of ſuch of the unappropriated lands, as had been previouſly purchaſed from the Indians, at the rate of £10 per

(12) See 1 vol. p. 822.
(13) See 1 vol p 891.
(14) See 2 vol. p. 21. 5th April 1782.
(15) See 2 vol. p. 88. 12th March 1783.

hundred acres: (16) and ſoon afterwards, it was extended to the ſale of lands within the purchaſe then made, or about to be made at the rate of £30 per hundred acres; (17) the proceedings being regulated, ſo as to ſecure impartiality in the treatment of applicants, by an act of the 8th of April 1785 (18).

From this operation of the land office, thus opened, the reſervations were confined, 1ſt, to iſlands within the rivers Suſquehannah, and its branches, the Ohio, the Alleghany and the Delaware; 2d, to the appropriated lands north weſtward of the Ohio and Alleghany; 3d, to the triangular tract on Lake Erie, purchaſed from the United States; and 4th, to certain bounties, or gifts, conferred on religious, or ſcholaſtic, inſtitutions and pre-emptive rights granted, or recognized, by law. But a great portion of the valuable land of the ſtate being ſold, an act was paſſed on the 3d of April 1792, for the ſale of all the remaining vacant lands within the commonwealth. By this act the price of the vacant land within the purchaſe of the year 1768, and all prior purchaſes from the Indians, was reduced to 50 ſhillings for every hundred acres; the price of the vacant land within the limits of the purchaſe of the year 1784, and lying eaſt of the river Alleghany and Conewango creek, was reduced to £5 for every hundred acres; and all other lands belonging to the commonwealth, lying north and weſt of the rivers Ohio and Alleghany and Conewango creek (not ſpecifically appropriated) were offered for ſale, "to "perſons who will cultivate, improve and ſettle the ſame, or cauſe "the ſame to be cultivated, improved and ſettled," for the price of £7 10 for every hundred acres, with an allowance of ſix per centum for roads.

The manner of locating, ſurveying, and ſecuring, to the reſpective purchaſers, the tracts of land, claimed, either upon warrants, upon actual ſettlements completed, or upon actual ſettlements commenced, may eaſily be traced in the ſeveral ſections of the act: but as the preſent caſe depends particularly on a conſtruction of the ninth ſection, it is proper to recite it here at large:—"And be it further enacted &c. "That no warrant, or ſurvey, to be iſſued, or made, in purſuance "of this act, for lands lying north and weſt of the rivers Ohio and "Alleghany, and Conewango creek, ſhall veſt any title in or to the "lands therein mentioned, unleſs the grantee has, prior to the date "of ſuch warrant, made, or cauſed to be made, or ſhall, within the "ſpace of two years next after the date of the ſame, make, or cauſe "to be made, an actual ſettlement thereon, by clearing, fencing and "cultivating, at leaſt two acres for every hundred acres contained in "one ſurvey, erecting thereon a meſſuage for the habitation of man, "and reſiding or cauſing a family to reſide thereon, for the ſpace of

(16) See 2 vol p. 201.
(17) See 2 vol p. 234. 21ſt December 1784.
(18) See 2 vol p. 311.

" five years next following his firſt ſettling of the ſame, if he or ſhe " ſhall ſo long live ; and that in default of ſuch actual ſettlement and " reſidence, it ſhall and may be lawful to and for this Commonwealth " to iſſue new warrants to other actual ſettlers for the ſaid lands, or any " part thereof, reciting the original warrants, and that actual ſettle- " ments and reſidence have not been made in purſuance thereof, and " ſo as often as default ſhall be made, for the time and in the man- " ner aforeſaid, which new grants ſhall be under and ſubject to all " and every the regulations contained in this act : *Provided always* " *neverthelefs*, That if any ſuch actual ſettler, or any grantee in any " ſuch original or ſucceeding warrant ſhall, by force of arms of the " enemies of the United States, be prevented from making ſuch actual " ſettlement, or be driven therefrom, and ſhall perſiſt in his endeavours " to make ſuch actual ſettlement as aforeſaid, then, in either caſe, he " and his heirs ſhall be entitled to have and to hold the ſaid lands, in " the ſame manner as if the actual ſettlement had been made and " continued." 3 *Vol.* 212. *Dallas s edition.*

As the diſpenſation contained in the proviſo, was to operate only in the caſe of an exiſting warfare, it was ſtated, in the diſcuſſion of the preſent caſe, that, in fact, hoſtilities between the United States, and the Indians, were never ſo entirely diſcontinued, from the period of the revolutionary conteſt, until General Wayne's treaty in the year 1795, as to render it practicable with ſafety, to make actual ſettlements upon the lands in queſtion. The poſition was ſhewn hiſtorically, from the military operations of the federal and ſtate governments ; judicially from the opinions of the courts of juſtice ; and experimentally from the evidence of diſintereſted individuals. Thus,

After the European peace of 1783, an army was always maintained on the weſtern frontier. During ſeveral years, General Harmer was employed in making hoſtile incurſions into the Indian country ; and, in the year 1790, he was defeated. The progreſs of general St. Clair terminated, alſo, in defeat, on the 4th of November 1791, only five months previouſly to the date of the law. General Wayne ſucceeded to the command proſecuted the war with vigor, and completely routed the enemy in the year 1794. This victory produced a treaty, which was ſigned on the 3d of Auguſt 1795, and was ratified on the 2d of December following. While theſe events occurred, the north weſtern frontier of Pennſylvania was conſtantly expoſed to the ſanguinary incurſions of the Indians ; many lives were loſt ; and, in the very deſcription of the proviſo to the ninth ſection of the act, every actual ſettler, or grantee, was " by force of arms of the " enemies of the United States, either prevented from making an " actual ſettlement, or driven from it". (19) The State of Penn-

(19) For the evidence to ſhew the ſtate of the country from the time of paſſing the act, until the ſummer of the year 1796, ſee the depoſitions of Alexander M'Dowell, Charles Campbell, David Meade, Roger Alden, John Denniſon, John Parker, and James Buchanan, in the appendix, letter C 1, 2, 3, 4, 5, 6, 7.

ſylvania, co-operating with the federal government, before the act paſſed, in the very ſeſſion in which it paſſed, and ſo late as December 1795, called out parties of the militia, raiſed regular troops, and eſtabliſhed military poſts: and, at one period, while negotiations for peace were carrying on, the ſtate ſuſpended her ſettlements, and plans of defence, in the country bordering on Lake Erie, at the requeſt of the federal government, leſt the enemy might take umbrage and break off the treaty. (20) In fine, the reſult of theſe circumſtances to prevent making, and continuing actual ſettlements, during the Indian war has been repeatedly recognized in the weſtern county courts, and in the courts of *Nisi Prius*, held by the Judges of the Supreme court in Alleghany county, ſubſequent to the ratification of general Wayne's treaty. (21)

But the diſpenſation, contained in the proviſo, is, likewiſe, qualified with a ſtipulation, that the actual ſettler, or grantee, in any warrant, "ſhall perſiſt in his endeavours to make ſuch actual ſettlement" as the law deſcribes. The perſeverance of the Holland Company, in time, in labor, and in money, was, therefore, exhibited in detail upon the preſent occaſion. It appeared from various official documents, and depoſitions, that the company had purchaſed and paid for 1162 tracts, of 400 acres each, ſituated in diſtricts No. 1, 2, 3, 6, and 7, and that for theſe tracts warrants of ſurvey were iſſued, dated, reſpectively, in the months of April 1792, and of April and Auguſt 1793. From the day of iſſuing the warrants until the preſent day, the en-

(20) For the various military meaſures purſued by the ſtate government, and the general opinion of danger, ſee the following laws and the entries in the journals of the ſenate: 3 vol. 19. 17th March 1791. 1 journal Sen. 272, 3, 24th Auguſt 1791. ibid. 27, 29, 37, 47, 54. December 1791, and January 1792. 3 State laws 177, 20th January 1792. 2 Journ. Sen. 8th Decem. 1792. 3 State laws 335. 3d April 1793. 2 Journ. Sen. 288. 29th Auguſt 1793. *Ib.* 294. 4th September 1793. *Ib.* 5th December 1793. 3 State laws 464. ſ. 2, 3. 28th February 1794. *Ib.* 483. 8th April 1794. 2 Journ. Sen. 264, 5. 2d September 1794. 3 State laws 757. 13th April 1795. *Ib.* 763. ſ. 13, 14.

(21) The queſtion was more particularly diſcuſſed and decided, on the trial of the leſſee of *Robert Morris vs William Neighman*, before YEATES and SMITH, juſtices, at *Nisi Prius*, in Alleghany county, in the year 1798. The plaintiff claimed under a warrant dated 4th March 1793, and obtained a verdict, agreeably to the direction of the court, againſt the defendant, who ſet up a title by actual ſettlement.

Since this report was prepared, the ſame queſtion has been agitated in the Circuit Court of the United States, in the *Leſſee of Balfour vs. Meade*, at April term 1803. The evidence was concluſive, that until the ſpring of 1796, it was not ſafe to proſecute ſettlements in the country, lying north and weſt of the rivers Ohio and Alleghany and Conewango creek: and although the cauſe was decided in favour of defendant, who claimed as an actual ſettler, upon other grounds, Judge Waſhington, in his charge to the jury, admitted the fact to be proved, and declared, that where the fact of prevention could avail the party, it operated during the whole war, and for a reaſonable time (according to the circumſtances of the caſe) after the treaty of peace. The opinion of the judge will be found at large in the appendix letter D.

deavours of the company and their agents, to occupy, improve, and ſettle the lands, has been inceſſant. Thus, as ſoon after the dates of the warrants, as the deputy ſurveyors could be prevailed upon to attempt to execute the ſurveys, in the years 1794, and 1795, a general agent was appointed to ſuperintend the buſineſs of the company, a large ſtore was built at Caſſewago, or Meadeville, and a ſum exceeding 5000 dollars was actually diſburſed. In the year 1796, companies of ſettlers were invited, encouraged, and engaged; ample ſupplies of proviſions implements, utenſils, &c. were ſent into the country; the expence of tranſporting families was liberally advanced; a bounty of one hundred acres was given for improving and ſettling each tract; and a further ſum of about 22,000 dollars was actually diſburſed.

In the year 1797 a ſum of about 60,000 dollars was further expended in promoting the ſame objects, including payments on contracts, for ſettlement, and quieting adverſe claims. In the year 1798, mills were erected, roads were opened, and other exertions were made, at a charge of not leſs than 30,000 dollars. In the year 1799, the ſum of 40,000 dollars and upwards was expended in improvements and ſettlements in the ſalaries and wages of agents and workmen; in opening and repairing roads; and in patenting 876 tracts of land. And in 1800 the operations and advances of the company will, at leaſt, be equal to thoſe of any preceeding year. (*c*) In ſhort, at the cloſe of the preſent year, near 400,000 dollars will be expended, according to the following view of the ſubject.

The amount of the purchaſe of the late James Wilſon Eſq. including the purchaſe money paid to the ſtate, at the period of obtaining warrants, was	222,071 10
The amount of diſburſements for making improvements, ſettlements, &c. was - -	157,000
The amount of taxes and expenditures, for the year 1800 will be - - - - -	18,000
dollars	397,071 10

And regarding the operations of the company, in another aſpect, we find, that the groſs amount of the expenditures, upon the quantity of land, which remained for them to improve and ſettle, will furniſh an average at the rate of 230 dollars, for each and every tract. For inſtance:

	tracts.	
The original number of warrants called for.		1162
But. from this aggregate there muſt be deducted,		
On account of prior occupants of the land	113	
On account of tracts loſt upon re-ſurveys in diſtrict No. 1	11	
	124	

(*c*) For the evidence of the facts contained in this recapitulation, ſee the depoſitions of R. Alden, and M'Dowell in the appendix. letter C 1, 4, and a ſummary of expenditures, C 5.

	124	1162
On account of tracts loſt upon re-ſurveys in diſtrict No. 6	3	
On account of bounties to actual ſettlers, who improved under the company, but at their own charge, one fourth of 1021 tracts - - -	259	
		386
		776

Then, it is ſeen, that the groſs amount of the expenditure to the preſent period, of 178,000 dollars being equally apportioned to 776 tracts, furniſhes, as has been ſtated, an average diſburſement of about 230 dollars, for improving each tract; a ſum which, in ordinary times, would certainly have been competent to accompliſh every improvement deſignated in the act of the 3d of April 1792.

But leaving theſe details, for a moment, to contemplate the general effect of the capital, induſtry, and enterprize, which the Holland Company have thus employed and diſplayed; and, it is found, that by a conduct the moſt upright and conciliatory, they have avoided, or adjuſted, every conflicting claim to any part of their purchaſe; ſo that there does not now exiſt a ſingle *caveat* on the files of the land office, againſt the iſſuing of any patent they demand (22). The benefit of their exertions has extended, too, far beyond the limits of their own property: nor are they merely their neighbours, who are accommodated and enriched; but the opulence, population, and ſecurity, of the whole range of weſtern frontier, have been augmented beyond all calculation. Nay, the influence of the example has been diffuſed throughout the ſtate, and is felt in every quarter of the Union (23).

Conſidering the terms of the act of the 3d of April 1792, it became a queſtion at the land office, in what manner the accompliſhment of an actual ſettlement and reſidence, within the meaning of the enacting part of the ninth ſection, ſhould be proved; and, alſo, upon what evidence, the diſpenſation of the proviſo, was to be allowed. On the firſt object, the Board of Property on the 16th of December 1797, prepared and publiſhed the form of a certificate in the terms of the law, to be ſigned by the deputy ſurveyor of the proper diſtrict, and by the diſtrict judge, or two juſtices of the peace, reſiding in the vicinity of the land (24): and on the ſecond object, they took the precaution of conſulting the attorney general, upon the form which

(22) See the official certificate, that the only caveats ever entered againſt the claims of the Company, were withdrawn, in appendix letter E.

(23) There cannot be a more forcible deſcription of the effects produced by the exertions of the Holland Company, than is contained in a pamphlet written by Mr. *Coxe* the Secretary of the land office, in the year 1799, called "A Set-"tlement Plan." Thoſe paragraphs that were cited by the counſel, in the courſe of the diſcuſſion, will be found in the appendix, letter F.

(24) See the minute of the Board of Property, in the appendix letter G.

they had drafted; and that gentleman, as it appears from the minutes of the Board, dated the 21ſt December 1797, declared "the "certificate propoſed by them, reſpecting the lands lying north and "weſt of the rivers Ohio and Alleghany and Conewango creek, to "be unexceptionable; if there was added a clauſe, conformable to the "proviſo contained in the ninth ſection of the act, that where the "ſettler, or grantee, has been prevented making ſuch ſettlement, or "hath been driven therefrom, by force of arms of the enemies of the "United States, and has perſiſted in his endeavours to make ſuch ſet-"tlement, he is entitled, as if ſuch ſettlement had actually been made "and continued." (25).

Upon ſuch deliberation, and with ſuch uniformity of opinion, in all the officers of the government, the forms of patents, as well as the forms of the certificates of ſettlement, or of prevention, were fixed and declared (26). The Population Company (an aſſociation formed on ſimilar principles and with ſimilar views) received on the 4th of February 1799, patents for numerous tracts of land, upon exhibiting the proofs of prevention preſcribed by the Board of Property. The Holland Company applied for patents for all their tracts, and have actually received patents for 876 tracts; the other patents being then withheld, merely for the purpoſe of a reſurvey, which the ſurveyor general directed to be made, in conſequence of the inaccuracy of the deputy ſurveyor. But before the reſurvey could be executed, a change had taken place in the land officers; a new conſtruction was given to the proviſo, attached to the ninth ſection of the act; it was inſiſted, that no patent could iſſue unleſs the terms of ſettlement and reſidence were, at ſome period, compleated, though the obligation to compleat them, during the Indian war, was ſuſpended; and the reſolutions and proceedings of the former Board of Property, on the ſubject, were not deemed authoritative and concluſive upon the preſent Board. At the ſame time, a number of perſons intruded upon the lands of the warrantees, on the pretence that the forfeiture, for non-ſettlement, was abſolute, at the expiration of two years from the date of the warrants, and ſet up claims as actual ſettlers. When, therefore, the Holland Company renewed their applications, for the reſt of their patents, the ſecretary of the land office refuſed to iſſue them; and the preſent motion was made to compel him to do ſo, as an official duty, by a writ of *mandamus* (27).

Such were the circumſtances (collected from evidence, of unqueſtionable notoriety, from teſtimony in the cauſe, or from conceſſions of

(25) See appendix letter H.

(26) For the form of the patent adopted, in the caſe of prevention, ſee appendix letter H.

(27) Several objections were made, in the courſe of the argument, to the form of the certificates produced by the Holland Company; but theſe, and other objections in point of form, eventually yielded to a diſcuſſion and deciſion of the general queſtion.

counsel) upon which the controversy arose. The general question was, whether the Holland Company had performed the condition of improvement, settlement, and residence, annexed to the sale of the lands: or were released, by the operation of the proviso to the ninth section of the act, from the obligation to perform it? And the arguments in support of the rule, embraced three distinct objects of enquiry: I. The facts relative to the hostile state of the country, and the persevering endeavours of the Holland Company to accomplish the settlement prescribed by the act. II. The construction of the proviso, attached to the ninth section of the act. III. The propriety of proceeding, in this case, by *mandamus*.

I. Of the facts relative to the hostile state of the country; and the persevering endeavours of the Holland Company, to accomplish the settlement prescribed by the act.

Whatever may be the effect of the proviso, in suspending, or releasing, the obligation to settle and improve the land, the case in which it operates cannot be mistaken. If a grantee in any warrant is prevented *by force of arms* of the enemies of the United States, from making an actual settlement, it is the express case of the proviso: but, it will not be contended, that the force of arms, here mentioned, means an actual application of military force, the Tomahawk, or the Rifle, either to drive a man from his settlement, or to prevent his entering upon the land, with a view to settle it. A well grounded apprehension of personal violence and danger, from a public enemy;—a terror arising from the force of arms in the neighbourhood; are equally within the spirit and protection of the law.

The actual state of hostility is proved in every possible way. The army of the United States was opposed to the Indians, as to a public enemy, and, with various success, from the year 1783, to the year 1795. At the time of passing the act, of the 3d of April 1792 (and, certainly, this fact furnished the inducement, for inserting the proviso to the ninth section) the whole of the north western frontier of Pennsylvania was in constant danger and alarm. For some time after the act was passed, the deputy surveyors did not dare to venture upon the execution of the duties of their office. And, until the spring of 1796, not an actual settler inhabited the country, except, perhaps, a few bold and enterprizing men, in the vicinity of a garrison. But the constitution of the United States, has declared "that no state shall, without the consent of congress, lay any duty "of tonnage, *keep troops*, or ships of war, in *time of peace &c.* or "engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." *Art.* 1. *s.* 10. Now, the state of Pennsylvania did raise and maintain troops, for the defence of her western frontier, from the 17th of March 1791, until the spring of the year 1796, alledging "that there was imminent danger of being "invaded by the Indian tribes, then at war with the United States; "and that it was necessary to take immediate and vigorous measures

" to prevent hoſtile incurſions, and to provide for the ſecurity of the " frontier inhabitants of this Commonwealth." The military operations of the ſtate, muſt, therefore, be regarded, on conſtitutional ground, as the beſt evidence, that a war exiſted; and the effects of that war, in preventing the ſettlement and occupancy of lands lying north and weſt of the rivers Ohio and Alleghany, and Conewango creek, cannot be more forcibly pourtrayed, than in the Legiſlative and Executive declarations and acts of the Government (28). The Judicial authority, indeed, has already ſettled the fact, that hoſtilities exiſted from the time of paſſing the act, until the ratification of General Wayne's treaty; and, without limiting the operation of the fact to a mere ſuſpenſion of the condition of ſettlement, improvement, and reſidence, the operation ſo far, at leaſt, was expreſsly recognized, during the continuance of hoſtilities, in the caſe of *Morris's Leſſee vs. Neighman* (29).

But, notwithſtanding the hoſtile ſtate of the country, the Holland Company commenced and proſecuted their attempts to ſettle and improve their land, during the whole period of the war, in a manner equally meritorious and beneficial. It is true, perhaps, that an attempt was not made to ſettle each particular tract; but the general effort to ſettle the whole, was all that could be reaſonably expected, under ſuch circumſtances; a combination of force and capital could alone diminiſh the danger to be encountered; and the reſult greatly contributed to eſtabliſh a barrier againſt the incurſions of the Indians. To the exertions during the years 1794 and 1795, while the war continued, muſt be added the *perſeverance* of the Company, in their endeavours to ſettle and improve in every ſubſequent year. During the war, the diſburſements for purchaſe money, and charges of improvement, amounted to near 230,000 dollars; and ſince the war, beſides the allowance to ſettlers, the diſburſements of caſh, have exceeded 178,000 dollars. Nor ought it to be forgotten, that after the dangers of war had ceaſed, another evil, almoſt as embarraſſing, interrupted, annoyed, and, in many inſtances, fruſtrated the endeavours of the Company. Rumours, raiſed and circulated by artful and intereſted men, and countenanced by the obſcure and equivocal language of the Law, were heard to inſinuate, that the Warrantees had incurred a forfeiture of their lands, by the lapſe of two years from the dates of the Warrants, notwithſtanding the terms of the proviſo. Some of thoſe perſons, who had engaged to ſettle for the Company, began to aſſert a right of ſettlement for themſelves. Hordes of intruders were preſſing eagerly into the poſſeſſion of the beſt tracts: And, in ſhort, ſuch was the doubt and ſolicitude, univerſally excited upon this queſtion of forfeiture, that the Warran-

(28) For the military operations of the ſtate, ſee the laws and proceedings referred to *ante. note* 20.

(29) *See ante. in note* 21.

tees could hardly obtain assistance, in the business of settlement and improvement, upon the most liberal terms of participation in the land, or payment of expences. Although these occurrences will sufficiently shew the impracticability of settling each particular tract, even since the peace; and although they encreased the difficulties to be surmounted, in the general effort to settle the whole; yet the integrity, enterprize, and perseverance, of the Company, to effectuate the settlements, were uniformly displayed, and have, on every occasion, been candidly applauded. Upon motives of interest, as well as upon the principles of their contract, they "persisted in their endeavours:" for, even after the Board of Property had decided, that they had acquired a legal title to the lands, and issued Patents in their favour; even at the moment of the present discussion; they have been, and are, employed (anxiously, laboriously, and expensively, employed) in compleating the settlement and improvement of every tract, which they have purchased.

Let it, then, be recollected, that this controversy does not arise between contending individuals, claiming under adverse titles; but between individuals, who have long paid for the lands, and the Commonwealth, who annexed to the sale certain conditions, to be released on a certain event, which event has actually happened. Of the forfeiture, if a forfeiture has accrued, the state alone can take advantage; and, independent of the strict legal question, will it be pretended, that, on any principle of equity, the advantage of a forfeiture ought, in such a case, to be taken? The obstacle to a full compliance with the conditions of sale, proceeded from a public calamity, against which it was the duty of the government to protect its citizens; the existence and operation of which the individuals could not avert, or controul; and for the consequences of which they ought not, upon the soundest maxims of civil policy, to be condemned to suffer. But, if it was the object of the state to repleniſh her Treasury by the sale of her western lands, that object has been promoted by the sale to the Holland Company, far beyond what could reasonably have been hoped. If the object was to strengthen and secure the frontiers, that object, too, has been more effectually obtained by the general operations of the Company, than it could have been by the weak and unconnected efforts of particular men: And if it is the spirit and policy of our Laws, that the country should be settled, its soil cultivated, and the arts of social life extended, what country was ever more rapidly, or more by the exertions of a single association, converted from a desert and a wilderness, into a scene of population, industry, and prosperity? Every inhabitant, every traveller, every writer, will be found in unison upon this subject; and even the Secretary of the Land-office, whose conduct has occasioned the present motion for a *Mandamus*, has appeared as the Eulogist of the Holland Company; exhibiting the merit and the success of their example, as an instrument to procure the

public patronage for his own project of settlement, in other parts of the State. (30)

Whatever, then, is the law, it must prevail: but it will not be denied, that a claim to a liberal and equitable construction of an ambiguous law, never was better founded. Prevented from accomplishing the settlements designated in the Act by a public enemy; opposed in the prosecution of those settlements by intruders, who derived, indeed, some colour for their pretensions, from an imperfect expression of the Legislative meaning; and thrown off their guard by the deliberate decisions of the Board of Property, and the authoritative proceedings of the public officers, under the seal of the Commonwealth; can it be conscientious, can it be just, can it be honorable, that the Holland Company, after a labour of eight years, and an expenditure of 400,000 dollars, should be condemned to a forfeiture of the lands, for which they have paid the full consideration, in favor of the State, who has received that consideration; who, if there has been error or mistake, the error or mistake, lies in the persons of her officers; and who, if the doctrine of forfeiture prevails, will not only retain the consideration money, but resume the soil, in absolute ownership, with all its ameliorations and improvement! Strange as it would appear, to exact a forfeiture, under such circumstances, for the benefit of the State, the occurrence would be still more extraordinary, if it had only the effect, to take the land from a meritorious Warrantee, and to give it to a lawless intruder. Till the forfeiture is regularly established, till the Government has determined to take advantage of it, and until a second Warrant has issued, reciting the default of the first Warrantee, any attempt of an individual to seize and retain the possession of the land, merits, not *reward*, but *punishment*. If such conduct should receive an Executive, a Judicial, or a Legislative, countenance, a scene of conflict, litigation, and tumult, must inevitably ensue, fatal to the rights of property, and the peace of the community. The spirit of interested jealousy, will extend its baneful influence, over what has been sanctioned with the seal of office; intrusions and forcible entries will generate riots and civil feuds; the Company will be despoiled of every benefit from their Patents, their labours, and their disbursements; and, if right is not to be passively surrendered to violence, the State will ultimately find another insurrection to suppress.

To avert the danger of such a scene, as well as to obtain a safe and certain guide for their conduct, the Holland Company have anxiously sought the opinion of this Court; and, they trust, that exceptions to form, will not be permitted to defeat the present opportunity, to place the subject on a permanent foundation, just to the Public, beneficial to Settlers, and useful to Warrantees. Unless,

(30) See *ante*, *note* 23.

indeed, a judicial conſtruction of the Law can now be obtained, exertions and ſucceſs will be in an inverſe ratio:—exertions will be greater, but ſettlements will be fewer in each ſucceeding year; until diſpair takes the place of enterprize; and the whole buſineſs of ſettlement and improvement ſhall be abandoned to occupants, whoſe only title is force, without patent, without warrant, and without purchaſe.

II. The conſtruction of the Proviſo, attached to the ninth ſection of the Act of the 3d of April, 1792.

The expoſition of the Proviſo, has produced a variety of propoſitions. 1ſt. By ſome, it has been ſuppoſed, that unleſs the terms of improvement, ſettlement, and reſidence, had been ſtrictly performed, within the reſpective periods of two years, and five years, a forfeiture accrued, though a war had raged throughout, and beyond thoſe periods. 2d. Others, admitting a qualified ſuſpenſion of the condition during a war, have, nevertheleſs, held, that no title could be acquired, until the performance of the terms of improvement, ſettlement, and reſidence, though the war ſhould laſt for a century; nor even then, unleſs the Warrantee had, during the whole war, perſiſted in his endeavours to perform them. 3d. A third conſtruction maintains, that if a Warrantee has been prevented, by force of arms, from accompliſhing the improvement, ſettlement, and reſidence, deſignated in the Act, but has perſiſted in his endeavours to accompliſh them, during the time mentioned in the ninth ſection, the proviſo operates as an extinguiſhment of the condition, and the title becomes abſolute. And 4th. It has been aſſerted, that a Warrantee, having been prevented by war, from making the improvement, ſettlement, and reſidence, during the time mentioned in the Act, will acquire an abſolute title, if he perſiſts in his endeavours for a reaſonable period, after the expiration of the war, though all his endeavours ſhould prove ineffectual.

1. The *firſt* opinion is at once extravagant, and iniquitous. No rational man, during the exiſtence of a war, which he could not reſiſt, or terminate, would have formed a contract of ſuch a nature. Nor is it conceivable, if this were the deſign and meaning of the Legiſlature, that the proviſo would have found any place in the Act, unleſs, indeed, fraud and deception can be imputed to its authors; and, it is to be preſumed, that an inconſiſtent, repugnant, and ambiguous, proviſo, has been employed, as the inſtrument to effectuate them. The enacting part of the ninth ſection preſcribes a ſettlement to be finiſhed in two years, and a reſidence to be continued for five years; and unleſs the proviſo, either diſpenſed with the ſettlement and reſidence altogether, or enlarged the periods for accompliſhing them, it is utterly impoſſible to aſcribe to it a motive, or a uſe.

2. The *ſecond* opinion is, alſo, pregnant with inconvenience, injuſtice, and abſurdity. If it affords the legitimate conſtruction of the Act, it applies equally to the caſe of the actual ſettler before-

warrant, and to the caſe of the Warrantee, with a view to actual ſettlement. The price of the land could not, therefore, be collected for the uſe of the State, nor could a title be acquired by the individual for a century, if the war ſhould laſt ſo long; nay, even at the termination of a long protracted war, the individual would be without remedy, unleſs he could prove, that, whatever might be the intermediate expence, or danger, his endeavours to accompliſh a ſettlement, had never been ſuſpended, or remitted. Conſider the ſtate of the country, and ſuch a condition annexed to the purchaſe of lands, would inevitably fruſtrate the primary intention of the Legiſlature.

2d and 3d. But it is not directly denied, that the right of the Holland Company is alive; and it is inſinuated, that the oppoſite arguments, do not militate againſt future grants, if the Company ſhall go on to compleat the ſettlements and reſidence deſcribed in the Act. It is proper, therefore, to conſider the *ſecond* and *third* conſtructions of the ninth ſection, connected with each other, and with the facts ariſing in the preſent caſe. The conceſſion of the oppoſite Counſel, is, indeed, an acknowledgement of the inception and progreſs, but a denial of the maturity, of the Company's title: while, it is contended, for the Company, that although the enacting part of the ninth ſection conſtitutes a condition precedent, to the veſting of a legal title in the Warrantees, that condition is totally ſuperſeded, or extinguiſhed, if the caſe of the Warrantee is embraced by the deſcriptions of the Proviſo; ſo that he thereupon acquires a legal title, without ſettlement, improvement, or reſidence.

By the Act, two deſcriptions of ſettlers are contemplated: 1ſt. Thoſe who have made improvements and ſettlements without Warrants; and 2dly. Thoſe who apply for Warrants, with a deſire to ſettle and improve. On both deſcriptions it is impoſed as a condition precedent, that they ſhall pay the price of the land, when Warrants are taken out; that they ſhall pay the expence of ſurveys; and that they ſhall improve, ſettle, and reſide, in the manner, and for the period, preſcribed. It is to be remarked, however, that a diſtinction is made, in one reſpect, between the Settler, and the Warrantee;—the former being bound to fulfil the condition precedent *perſonally;* and the latter being authoriſed either to do it himſelf, or to *cauſe it to be done* by others. This, which, at the firſt bluſh, might appear an advantage to the Warrantee, is converted into a hardſhip and an injury, the moment the ſuſpicion of forfeiture inſinuates itſelf among the claſs of people. who are to form the actual ſettlers. There is another diſtinction, alſo, that the actual ſettler muſt pay intereſt from the date of the improvement; and he was bound to apply for a Warrant within ten years after paſſing the Act (31): but, on the other hand, the land and perſonal property

(31) The period has been enlarged. See 6 vol. p. 25.

of the Warrantee and actual Settler were equally exempt from ſtate taxes, for the ſame period; and, it is urged, that the price of the land was trifling, compared with its real value. Let it be anſwered, however, that the exemption from taxes can hardly be regarded as a favor; and the lowneſs of the price affords no reaſonable ground of argument. The Settler without Warrant is charged an intereſt, and the Settler with Warrant advances his money. From the fund created by Warrantees, inveſted in the Bank of Pennſylvania and in Public Stock, the State has drawn a great portion of that revenue, which has been adequate, for many years, to all her objects of public expenditure and improvement. Beſides, no State tax was then impoſed there was none likely to be impoſed for ten years; and, the fact is, that even at this day a State tax is not in exiſtence nor in contemplation. The lowneſs of the price, too, aroſe from an avowed conſciouſneſs that a great part of the public lands would not ſell higher; and, as to the reſt, the price would be exhorbitant, indeed, on the principles of the oppoſite conſtruction. After all, the wealth of the State conſiſts in its population, and advancement in the arts of agriculture, commerce, and manufactures, not in the mere accumulation of coin.

Theſe preliminary remarks are ſuggeſted, with a view to place the controverſy on its real footing;—on the footing of a bargain, in which the ſeller and the purchaſer equally conſulted their reſpective intereſts, and are equally bound (though the one is a State, and the other a private perſon) by the terms of the contract. It is agreed, that there was a condition precedent, which muſt be performed, or be diſpenſed with, upon the terms of the contract, before any title could veſt in the Warrantees. It is, alſo, agreed, that the condition precedent has not been ſtrictly performed; for, more than two years have elapſed ſince the date of the Warrants, but no ſuch ſettlement, improvement, and reſidence, have been made and continued, as the enacting part of the ninth ſection deſcribes. What, then, is the operation of the contract, under ſuch circumſtances, connected with the Indian war? The adverſe Counſel will not explicitly aver, that the reſult is an abſolute forfeiture of the lands; but they peremptorily deny, that it amounts to a releaſe, or extinguiſhment, of the condition precedent. Where, however, is the expreſſion to be found, that, the predicated event, diſpenſes with the condition in part, and adheres to it in part;—that diſpenſes with the limitation of time, for performing the act, but, nevertheleſs, inſiſts upon the act being performed? Even in the condition precedent, a reſidence of five years is not, in every caſe, neceſſary: for, it is only required, (independent of hoſtilities) if the Warrantee or Settler, "ſhall ſo long live." That cauſe of abſolute diſpenſation, with reſpect to reſidence, muſt often occur; and it is reaſonable to conclude, that the exiſtence of hoſtilities was, likewiſe, conſidered, and intended as entitling the party to an equal degree of indulgence.

But, after all, it muſt be agreed, that the wording of the Act is, in ſome places, incoherent and abſurd. Thus, on a gramatical conſtruction, the actual ſettlement deſcribed by the ninth ſection, compriſes a reſidence of five years; and, yet, the ſame actual ſettlement is required to be made within two years from the date of the warrant. Subſequent paſſages, indeed, treat actual ſettlement and reſidence, as diſtinct objects; but, another confuſion of ideas is introduced: for, we find that the party is called "*ſuch actual ſettler*," though he has been "prevented making ſuch *actual ſettlement*," and, it is provided, that "if he is *prevented* from making an actual ſettlement, but *perſiſts* in his endeavours to make it, he and his heirs ſhall have and hold the lands, in the ſame manner, *as if the actual ſettlement had been made and continued.*" From the difficulties of the language of the Act, therefore, we muſt endeavour to reſcue ourſelves, by aſcribing to the Legiſlature a meaning, which, while it comports with a rational expoſition of the words, ſhall be conſiſtent with public policy and the principles of juſtice.

The State, having received the money of the Warrantees, was naturally led, from the exiſting hoſtilities, to contemplate the injury to which their purchaſe was expoſed. Whether the hoſtilities would prevent the ſettlement, or not, it might be difficult to foreſee; but the Legiſlature, in offering the lands for ſale, muſt have held out the probability, that there would be a ſafe opportunity to ſettle; or the condition of ſettlement could never rationally and fairly have been propoſed. If, therefore, the opportunity, implied in this overture, was defeated, it ſeems to follow as a legitimate conſequence, that the condition ought not to be enforced. Conſider, for a moment, the ſituation of a Warrantee, bound by the ſtrict condition to ſettle, or, by the diſpenſing proviſo, to perſiſt in his endeavours to ſettle. He muſt explore, locate, and ſurvey each tract, before he can attempt to ſettle. He muſt collect, appropriate, and apply, the funds neceſſary to defray the various expences of ſettlement, improvement, and reſidence. He muſt be in conſtant preparation to ſeize and employ the opportunity for ſettling.—Under ſuch obligations, the mere pecuniary charge of watching; for a ſafe occaſion to enter upon his lands (independent of time, labour, and anxiety) would, in moſt inſtances, be greater, than the coſt of actual ſettlement, in a ſeaſon of public tranquility. Exhauſted in money, perplexed by doubt and ſuſpence, grown old and infirm in a courſe of exertion, or perſiſtance, what pretext could juſtify an accumulation of ſuch diſappointment, injury, and loſs, by exacting a forfeiture of the lands? The peace Warrantee, who has waited till the ſtorm has paſſed away; or the intruder, who, at the cloſe of a war, uſurps the name of actual ſettler, has none of theſe calamities to encounter; and, yet, no greater price has been paid, no other conditions are impoſed, in either of thoſe caſes, than in the caſe of the Warrantee, who is defeated in all his exertions,

and drained of all his reſources, by the unavoidable operations of a public war!

Is there, then, no principle of juſtice and humanity, to claim relief from the Legiſlature, upon the conſtruction, for which the Holland Company contend? Would it be unreaſonable to ſuppoſe, that, under ſuch circumſtances, the Legiſlature intended to veſt in the perſevering, but unſucceſsful, Warrantee, an abſolute eſtate in the land, upon which he might eſtabliſh a credit, to furniſh means for renewing his exertions, and ultimately compenſating his advances and his labours? If the ſuppoſition involves nothing unjuſt, or irrational, the frame of words will ſufficiently ſerve to give it body and effect. Thus: it is declared, that ſhould the Grantee "be *prevented* from making ſuch actual ſettlement," and perſiſts in his endeavours to make it, he ſhall hold the lands, as if it were made and continued: but the word *prevented* implies, that he had failed; and *perſiſting in an endeavour*, does not import *ſucceeding* in it.—Again: The Grantee is to have the lands," if he perſiſts in his endeavours *to make* ſuch actual ſettlement: but this does not involve a condition, that he ſhall perſiſt *until* he has made it, or *ſo as* to make it; and "*endeavouring to make*," is an expreſſion that deſignates an attempt, not a performance. Again: If the Grantee is prevented, but perſiſts in his endeavours to ſettle, he is entitled "to have and to hold the lands, in the ſame manner, *as if* the actual ſettlement had been made and continued:" but no title could veſt in the Grantee, unleſs the condition precedent was performed; and, yet, by force of the proviſo, he is *to have the lands* (not merely the benefit of a prolongation of the time for ſettlement) in a caſe, where from the hypothetical terms employed, it muſt be clearly underſtood, that the condition had not been performed. Again: The Grantee, being prevented, but perſiſting in his endeavours to ſettle, is, by force of the proviſo, to have and to hold the lands, "*in the ſame manner*," as if the condition precedent had been performed: but if the condition precedent had been performed, the Grantee would have held the lands in fee, diſcharged from any limitation, contingency, or incumbrance whatſoever; and, conſequently, in this caſe, to enable a Grantee to hold *in the ſame manner*, perſiſting in his endeavours to ſettle, muſt be conſidered as tantamount to actual ſettlement and reſidence. In ſhort, in every ſentence of the Proviſo, the Legiſlature plainly points at a certain ſtate of things, at ſome concurrence of circumſtances, when the Grantee would be abſolutely entitled to the land before, and without, making and continuing, an actual ſettlement.

The only queſtion, then, muſt be,—what is the nature of the endeavours preſcribed; during what period the endeavours are to be made;—and how long the Grantee is bound to perſiſt? The actual ſettlement muſt be made, or excuſed, within two years from the

date of the warrant; and the reſidence muſt not only be five years, but five years next following the firſt ſettlement. The time, therefore, is a characteriſtic of the condition precedent; an ingredient in the definition, as eſſential to the contract, as the nature of the act required to be performed. If the time is as *eſſential*, it is as *limited*, as the nature of the act to be performed; and hence, does it not follow, that at the expiration of two years, as to the ſettlement, and of five years, as to the reſidence, the condition muſt be actually performed, or virtually annulled? The excuſe for non-performance is, alſo, limited; ſince, on an allegation of being prevented from ſettling, or reſiding, the Grantee muſt ſtate the force of arms, which prevented him, to be within, and until the end of two years, (as to the ſettlement) next immediately after the date of his warrant; and within and until the end of five years (as to the reſidence) from the date of his firſt ſettlement; or his plea ſhews no diſpenſation from the condition. Thus, the time, within which performance is to be effected, or an apology for non-performance to be received, is the ſame, or, at leaſt, commenſurate: And if the period, within which the ſubſtitute for performance is exacted, within which the endeavour to perform muſt be ſhewn, cannot be extended in favor of the Warrantee, what right, expreſs, or implied, can there be, on the part of the State, to inſiſt on a continuance of the endeavour, beyond the period, within which the contract obliged her to accept it, as a commutation for the performance? Equality is equity, whoever may be the parties to the bargain; States, or Individuals: but it would be a doctrine of arbitrary prerogative, if performance, or endeavours to perform, ſhould only avail the Grantee, to releaſe him from the condition, within a limited period; yet, that the obligation to perform, or to perſiſt in the endeavour to perform, ſhould be indefinite and perpetual. Nor is the idea correct, that the war excuſed the Warrantees from endeavouring to effect a ſettlement, during its continuance; and that the law contemplated a perſeverance only when it could be effectual. On the contrary, the law obviouſly required a perſeverance in the endeavour to ſettle, during the war; but left the degree of perſeverance to be regulated, by conſiderations of a reaſonable diſcretion, and perſonal ſafety. That this was the conſtruction of the Holland Company, appears inconteſtibly from the immediate ſteps which they purſued to compleat their ſurveys and improvements: and this is, in truth, the material ground of complaint againſt the oppoſite doctrine;—that, by the contract, the Grantees were obliged to make laborious, hazardous, and expenſive exertions, during the war; and, yet, at the concluſion of the war, derive no advantage from thoſe exertions, in conſummating the legal title to the lands.

On the doctrine, that the Grantee, or Settler, muſt perſiſt in his endeavours to improve and reſide, for any other periods, or

beyond the reſpective periods, of two and five years, let it be aſked, when thoſe other periods are to commence, and how long are they to be protracted? The law itſelf is ſilent; and, yet, if an intention of that kind had been entertained, how eaſily, and how certainly, would the Legiſlature have ſaid, that "the Grantee ſhall have the lands, if the ſettlement is compleated, within two years, after the ceſſation of hoſtilities, and the reſidence continued for five years ſubſequent to the ſame epoch." But by whom ſhall the ſilence of the law be ſupplied? What power exiſts to add the ſlighteſt circumſtance to the terms of the contract? The Legiſlature, as a party, cannot explain, or expound, it. The Courts of Juſtice can only declare the meaning, from the fair and genuine import of the language of the Act: they cannot diminiſh, or enlarge, the veſted rights of individuals, any more than they can ſuperſede the rights of the State. And, on this occaſion, the Officers of the Land-office, have only a miniſterial function to perform. Let it, therefore, be repeated, that the proviſo to the ninth ſection, having reſted the conſummation of the Grantee's title, ſimply, upon the perſiſting in an endeavour, it would be creating a new contract, making a new law, introducing another principle, and amplifying the words of the Legiſlature, to require, not a perſevering endeavour, but an actual performance. Beſides; would it be juſt to fix upon the cloſe of the war, as the period for commencing the endeavour, without giving ſome credit for the exertions of the Grantee, or the Settler, flagrante bello? And, yet, who ſhall make the apportionment, of time, of labour, and of expence; and upon what principle can it be made? It often happens, that what is intended to afford an undue preference to a favorite, in a remote conſequence, proves peculiarly injurious to him. The merits of the actual ſettler, have ſometimes been enhanced, in order, by an invidious compariſon, to depreciate the claims of the Purchaſer, or Warrantee: but, it is obvious, that a determination, upon the ground taken by the oppoſite Counſel, would operate more ſeverely, with greater cruelty, towards the actual ſettler, than any conſequence that can flow from the conſtruction urged in favor of the Holland Company. For inſtance: A man enters upon his lands in the year 1792, with a view to make the improvements, which the Act requires. He is attacked by the Indians, and driven from his cabin and his field, before he has time to make any viſible progreſs in building, clearing, and cultivating; but, he obſerves, in the words of the Act, that being driven from his ſettlement, he ſhall, nevertheleſs, have title, *as if* he had completed his improvement, and continued his reſidence, if he perſiſts in his endeavours: He, therefore, returns the next year, and is again driven away, *re infecta;* and ſo on, for a ſucceſſion of years. Shall ſuch a perſeverance be accounted as nothing? And, is it not obvious, that to require that the actual ſettler ſhall be driven away, and con-

ſtantly kept away, and yet ſhall compleat the ſettlement and reſidence, places him in a condition more grievous, than even the caſe of the Warrantee, who is merely prevented from entering and improving the land?

Upon the whole, then, let the proviſo operate as a releaſe of the condition precedent, or let it be taken as qualifying the condition, and requiring a reaſonable perſeverance during, or after, a war, the claim of the Holland Company muſt be eſtabliſhed. They perſiſted, in ſpite of every danger, while hoſtilities raged; and more than five years have elapſed, ſince the Indian Treaty, during which they have, alſo, perſiſted.

III. Of the propriety of proceeding, in this caſe, by Mandamus.

In entering upon this part of the diſcuſſion, it is proper to enquire, whether the conſtruction given by the Board of Property to the proviſo, is not concluſive. It was given after great deliberation, and upon the legal advice of the Law Officer of the State. Patents have been iſſued, in purſuance of the conſtruction; and transfers have been made and accepted upon the faith of the Public grants, under the Great ſeal. *Stare deciſis*, is a maxim to be held forever ſacred, on queſtions of property; and, in the preſent inſtance, applies with peculiar force, as the rule was given by the State herſelf, through the medium of her officers; and with her alone, not with any individual, can a conflict ariſe. The Board of Property is of a judicial character, and had juriſdiction in the preſent caſe. 2 Vol. State Laws, *p.* 21. *ſ.* 2. 3. 3 Vol. 2. 456. 4 Vol. 476. 3 Vol. 213. 311. There is no reviſionary, or appellate, authority eſtabliſhed for queſtions of this nature: And, certainly, the Secretary of the Land-office, though a conſtituent member of the Board of Property, is merely, as Secretary, a miniſterial officer, bound by the deciſions of the Board, though contrary to his own opinions. His miniſterial duties (of which it is one, that he ſhall obey the orders of the Board of Property) are ſtated in the ſeveral Laws, relating to the Land-office, and they have received a practical expoſition, which devolves on him the care of preparing Patents for the Governor's ſignature, and the Seal of the State. He is bound, then, to execute the public laws, relating to the Land-office; and, if he refuſes to do ſo, the Court will compel him by Mandamus, on general principles, as well as on the authority of particular caſes.

The general principle of the mandamus, points at caſes, in which there is no other legal, ſpecific, remedy, for, a ſatisfaction in damages is not regarded, in ſuch caſes, as an adequate reparation: and then it may be awarded to any public, or private, perſon. 1 *Woodes. Lect.* 118. 3 *Black. Com.* 110, 3 *Burr.* 1267. 1659. 4 *Burr* 2188. 2 *Burr.* 1045. 3 *T. Rep.* 651. 1 *T. Rep.* 404. *Douglas* 568. The particular inſtances are numerous. It lies to compel the ordinary to grant letters of adminiſtration: 1 *Black. Rep.* 640. to compel the delivery of an adminiſtration bond to be put in

ſuit: 4 *Bac. Abr.* 508. *Cowp.* 140. to compel the grant of a licence to a Curate, if refuſed without juſt reaſon: 4 *Bac. Abr.* 502. 506. 2 *Stra.* 797 to compel the proper officer to affix a ſeal: 4 *Bac. Abr.* 509. or to regiſter a certificate, being merely a miniſterial act: *Id.* 508. 1 *Wils.* 283. to compel the party to proceed in proving a Will: *Raym.* 235. 15 *Vin. Abr.* 203. to oblige any officer to do his duty: 4 *Com. Dig.* 207. to compel obedience to things enjoined by Statute. 2 *Stra.* 992. to compel the enrolment of a Teſtament, which by cuſtom ought to be enrolled: 2 *Roll. Abr.* 106. 1 *Sid* 443. to compel a clerk of a company to deliver up books: 1 *Stra.* 879. to compel an old officer to deliver records to a new one: 1 *Sid.* 31.

The arguments in oppoſition to the motion for a mandamus, were arranged under three conſiderations: 1ſt, What is the real import of the condition precedent: 2d, What the Holland Company had performed, to veſt in them a legal title to the lands: and, 3d, Whether a mandamus does lie to the Secretary of the land office, even if the Company are entitled to patents.

I. What is the real import of the condition precedent.

This general enquiry, naturally, divides itſelf into a view of what muſt be accompliſhed, by perſons, who meet with no prevention from the enemies of the United States; and of what muſt be done, even by perſons who are ſo prevented; in order to obtain a legal title to the land. The policy and object of the Legiſlature, are to be aſcertained, by the circumſtances, which induced them to paſs the act of the 3d of April 1792 Before it was paſſed, and at the time of paſſing it, there was a ſubſiſting Indian war; and the treaty of 1794, between the United States and Great Britain, had not removed thoſe cauſes of irritation, and apprehenſion, in relation to that power, which extended along the northern and weſtern boundaries of the ſtate. Hence, it became of the greateſt importance, to advance the range of ſettlement; and to interpoſe the barrier of a bold and hardy population, in the quarter, where danger was ſo apparent. Treaſure was, obviouſly, only a ſecondary conſideration; and ſettlement itſelf was only ſtipulated where the danger exiſted. Thus, the lands eaſt of the Alleghany were offered for ſale, unſhackled with conditions of ſettlement; while thoſe, on the weſt, could never be veſted in any individual, upon any other terms, than thoſe of actual ſettlement and reſidence. The ſteady caution of the Legiſlature on this point, is conſpicuous in almoſt every ſection of the act. The ſale is only offered to perſons, who will cultivate, improve, and ſettle the lands. 3 *vol.* 209. *f.* 2. *p.* 209. An actual ſettler without warrant, is ſo highly regarded, that although the law would deem him a treſpaſſer, on general principles, the act prohibits any deputy ſurveyor from ſurveying any ſettled land, but for the owner

of the ſettlement. *ſ.* 5. *p.* 210. A period of ten years credit is given to an actual ſettler for the price of his land. *ſ.* 10. *p.* 210. The land is exempt from direct taxes for an equal term. *ſ.* 12. *p.* 213. And when the Legiſlature, in the year 1794, cloſed the Land-office, it was with an expreſs exception in favor of actual ſettlers. 3 *St. Laws.* 637. (32) In addition to theſe proofs of the policy and deſign of the Legiſlature, it muſt be of great force to recollect, that ſhortly before the time of offering the land for ſale at the rate of 7l. 10s. per 100 acres, the State had paid to the United States, at the rate of three-fourths of a dollar for every acre, contained in the triangular tract bordering on Lake Erie. (33)

The language of the Act ought, then, to be expounded, in conſiſtency with the policy, that gave it birth; and this can only be done, by conſidering the effect of a prevention, by a public enemy, to be a ſuſpenſion, and not an extinguiſhment, of the obligation, to ſettle and reſide upon the land. The Legiſlature muſt have preſumed, that, notwithſtanding the exiſtence of the Indian war, there would be an extenſion of the weſtern ſettlements; the accompliſhment of a ſettlement was made a *ſine-qua-non*, to the inveſtment of a legal title; and the proviſo declares nothing more, in effect, than that the war ſhall be an excuſe for non-ſettlement, while it continues, and the Warrantee ſincerely perſiſts in his endeavour to ſettle. But an endeavour to ſettle muſt be ſhewn, whether war raged, or not; and the endeavour muſt be to ſettle every tract, (each being the ſubject of a ſeparate grant) not a general effort to improve an extenſive and indefinite range of country. It being the ſpirit of the contract, that the land ſhould be ſettled, no argument ought to avail on the ſcore of the Warrantee's having paid the ſtipulated price; and the word ſettlement, wherever uſed, is pregnant with all the conſequences, of building, cultivation, and reſidence, deſcribed in the ninth ſection of the Act. It is now too late to complain of hard terms. Whatever was intended, and undertaken, by virtue of the Law, it is juſt and lawful to enforce. Say, even that a forfeiture has been incurred, and inſiſted on, it can be no reaſon, at this day, to reproach the Government. That point, however, is not urged; for, every argument, uſed on the preſent occaſion, to oppoſe the Mandamus, is perfectly conſiſtent with the idea of future grants, or patents, being iſſued to the Holland Company, if they perſevere, and, in a reaſonable time, comply with the requiſites of the condition precedent.

(32) The Land-office appears to have been cloſed, upon the ſuggeſtion of the Governor, that Warrants had iſſued for a greater quantity of land, than the State owned; and not with a view to favor actual ſettlers. See the Governor's meſſage of the 2d Sept. 1794.

(33) The payment was made in public certificates; which, it was inſiſted, were greatly depreciated in value.

II. What have the Holland Company performed to veſt in them a legal title to the lands.

It muſt be repeated, that every tract is the ſubject of a diſtinct grant; and that the condition precedent attaches to each tract. Nor does it affect the obligations of the condition, that the Holland Company are the holders of all the Warrants in queſtion; for, the law is the ſame, as if each Warrant belonged to a ſeparate individual owner. Have the Company, then, ſhewn an actual ſettlement, or even an endeavour to ſettle, upon each of the tracts? The evidence exhibited by the Company themſelves, eſtabliſhes a contrary poſition. Can it be ſufficient to ſay, that they have improved a great deal of the country, and, therefore, are entitled to hold what they have not improved? The ſpirit of monopoly, was an evil againſt which the Legiſlature meant to guard, by dividing the territory offered for ſale into tracts, and reſtricting the right of purchaſe to a ſingle tract. It is true, that the contrivance of opulent ſpeculators has evaded the legiſlative precaution; and inſtead of each ſettler being the owner of the tract on which he reſides, he is the mere inſtrument of an aſſociation of foreigners (who never have viſited, and probably, never will viſit, America) to obtain, for their emolument, the lands which the State had offered for ſale, with very different views of policy and benefit.

Let it be admitted, however, that the Indian war, operated as an excuſe, for not ſettling each tract, 'till the ſpring of 1796, yet, the ratification of General Wayne's treaty removed every obſtacle, and was a warning to every Warrantee, that the ſeaſon had arrived, when, by perſiſting in his endeavours, he might conſummate his legal title. If, indeed, no induſtry, or care, could have enabled the Company to comply with their contract, the condition would ſtill, perhaps, be ſuſpended: but it is not clear, that a ſettlement was impracticable at any time, and certainly it has been practicable for five years paſt. The Company have already obtained 876 Patents, without a performance of the condition; and it is remarkable that until the re-ſurvey in 1799, they could not even aſcertain, what tracts were embraced by the remaining 153 Warrants. As to the lands, therefore, for which Patents are now claimed, nothing more has been done by the Company, than to locate and ſurvey them; and unleſs the Indian war operated as a releaſe of the condition, there is no title acquired.

III. Whether a Mandamus does lie to the Secretary of the Land-office, even if the Holland Company are entitled to Patents.

The Board of Property is a Court of Juſtice; and ſhould be governed by the principles of law, in relation to the proof of matters, within their juriſdiction. The Certificate of Prevention, framed by the order of the 21ſt of December, 1797, (34) is deſtitute of

(34) See *ante. note* 25.

every characteriſtic of evidence; and it has even been evaded in the manner of returning it; for, the order required the ſignature of the proper Deputy Surveyor, and two Juſtices; but, in many inſtances, the Certificate is ſigned by the ſame perſon twice once as Deputy Surveyor, and again as a Juſtice. Conſider the order as a rule of practice; rules of practice are forever in the power of the Court, to alter or reſcind; and the ſucceeding Board of Property could not be reſtrained in this reſpect, by the acts of their predeceſſors. Beſides, the order of the 21ſt December, 1797, is radically defective in other points. The Board of Property was bound to enquire for themſelves, whether ſettlements had been compleated, or prevented, within the meaning of the Law; it was a judicial authority, which could not be delegated; and, yet, by this order, it was actually transferred to the Deputy Surveyors and Juſtices; nor was the ſanction of an oath required for the fidelity of their Certificate; which, indeed, is not a ſtatement of facts, but the declaration of a reſult. The introduction of ſuch an order was, therefore, an error, and its revocation became a duty.

The Secretary of the Land-office, in his judicial capacity, as a member of the Board of Property, decided againſt the force of the Certificate of Prevention, to entitle Warrantees to Patents: and the effect of the Mandamus would be to compel him to do, as an executive officer, what he has declared, as a Judge, ought not to be done. Nor is the act required within the duties of his office. The Patent is an act of the Governor; and affixing the State ſeal, is an act of the Secretary of the Commonwealth: but the Secretary of the Land-office can neither iſſue a Patent, nor affix the ſeal, nor compel others to do ſo. It is to be remembered, likewiſe, that the Board of Property is eſtabliſhed expreſsly as a tribunal, to adviſe and regulate the proceedings of the Land-office; and a Mandamus ought not to iſſue to any of the miniſterial officers, requiring an act to be done, which the Board has prohibited. 2 *State Laws.* 21. 3 *St. Laws* 3 *ſ.* 3. 3 *Bl. Com.* 111.

But there is, both in law, and in practice, a ſpecific appropriate and adequate remedy, which ſuperſedes any pretext for iſſuing a Mandamus. If the Secretary of the Land-office refuſes to perform a duty, an application may be made to the Board of Property, whoſe orders he muſt obey; and if the deciſion of the Board of Property is not ſatisfactory to the applicant, he may inſtitute an ejectment. By this courſe order will be preſerved, juſtice will be adminiſtered, and the intereſts of the State, as well as of individuals, will be protected.

The Judges delivered their opinions in the following terms:

SHIPPEN, *Chief Justice.*

THE Legiſlature, by the Act of 3d April, 1792, meant to ſell the remaining lands of the State, particularly thoſe lying on the north and weſt of the rivers Ohio and Alleghany. The conſideration money was to be paid on iſſuing the Warrants. They had, likewiſe, another object, namely, that if poſſible, the lands ſhould be ſettled by improvers. The latter terms, however, were not to be exacted from the Grantees at all events. The Act paſſed at a time when hoſtilities exiſted on the part of the Indian tribes. It was uncertain when they would ceaſe; the Legiſlature, therefore, contemplated, that Warrants might be taken out during the exiſtence of theſe hoſtilities, which might continue ſo long, as to make it impoſſible for the Warrantees to make the ſettlements required, for a length of time; not, perhaps, until after theſe hoſtilities ſhould entirely ceaſe. Yet, they make no proviſion, that the ſettlements ſhould be made within a reaſonable time after the peace; but expreſsly within two years after the dates of the Warrants. As, however, they wiſhed to ſell the lands, and were to receive the conſideration money immediately, it would have been unreaſonable, and, probably, have defeated their views in ſelling, to require ſettlements to be made on each tract of four hundred acres, houſes to be built, and lands to be cleared; in caſe ſuch acts ſhould be rendered impoſſible by the continuance of the Indian war. They, therefore, make the proviſo, which is the ſubject of the preſent diſpute, in the following words: "*Provided always, nevertheleſs*, That if any ſuch "actual Settler, or any Grantee, in any ſuch original or ſucceeding Warrant, ſhall by force of arms of the enemies of the United "States, be prevented from making ſuch actual ſettlement, or be "driven therefrom; and ſhall perſiſt in his endeavours to make ſuch "actual ſettlement as aforeſaid; then, in either caſe, he and his "heirs, ſhall be entitled to have and to hold the ſaid lands, in the "ſame manner, as if the actual ſettlement had been made and continued."

When were ſuch actual ſettlements to be made? The ſame ſection of the Act which contains the above proviſo, gives a direct and unequivocal anſwer to this queſtion, "Within the ſpace of two "years next after the date of the Warrant." If the ſettlements were not made within that time, owing to the force or reaſonable dread of the enemies of the United States, and it was evident that the parties had uſed their beſt endeavours to effect the ſettlement; then, by the expreſs words of the law, the reſidence of the improvers for five years afterwards, was expreſsly diſpenſed with; and their title to the lands was complete, and patents might iſſue ac-

cordingly. It is contended, that the words "Perſiſt in their endeavours" in the proviſo, ſhould be extended to mean, that if within the two years, they ſhould be prevented by the Indian hoſtilities from making the ſettlement; yet, when they ſhould be no longer prevented by thoſe hoſtilities, as by a treaty of peace, it was incumbent on them, then to perſiſt to make ſuch ſettlement. The Legiſlature might, if they had ſo pleaſed, have exacted thoſe terms; (and they would not, perhaps, have been unreaſonable) but they have not done ſo: They have expreſsly confined the time of making ſuch ſettlements, to the term of two years from the date of the warrant. Their meaning and intention can alone be ſought for, from the words they have uſed, in which there ſeems to me, in this part of the Act, to be no great ambiguity. If the contrary had been their meaning, they would not have made uſe of the word "endeavours," which ſuppoſes a poſſibility, at leaſt, if not a probability, as things then ſtood, of thoſe endeavours failing on account of the hoſtilities; and would, therefore, have expreſsly exacted actual ſettlements to be made, when the purchaſers ſhould no longer run any riſk in making them.

The State having received the conſideration money, and required a ſettlement within two years, if not prevented by enemies; and in that caſe diſpenſing with the condition of ſettlement and reſidence, and declaring that their title ſhall be then good and as effectual, as if the ſettlement had been made and continued: I cannot conceive they could mean to exact that ſettlement at any future indefinite time. And, although it is ſaid, they meant that condition to be indiſpenſable, and that it muſt be complied with in a reaſonable time; we have not left to us that latitude of conſtruction, as the Legiſlature have expreſsly limited the time themſelves:

It is urged, that the main view of the Legiſlature was to get the country ſettled and a barrier formed: this was, undoubtedly, one of their views, and for that purpoſe, they have given extraordinary encouragement to individual ſettlers; but they had, likewiſe, evidently, another view, that of encreaſing the revenue of the State, by the ſale of the lands. The very title of the Act is "For the ſale of the vacant lands within this Commonwealth;" this latter object they have really effected, but not by the means of the voluntary ſettlers: it could alone be effected by the purſes of rich men, or large companies of men, who would not have been prevailed upon to lay out ſuch ſums of money as they have done, if they had thought their purchaſes were clogged with ſuch impracticable conditions.

I have hitherto argued upon the preſumption, that the words "Perſiſt in their endeavours," relate to the Grantees, as well as the Settlers; but, in conſidering the words of the proviſo, it may be well doubted, whether they relate to any other Grantee or Settler, than thoſe who have been driven from their ſettlements; the word "perſiſt," applies very properly to ſuch: The words of the

proviſo are, "If ſuch actual Settler, or any Grantee, ſhall, by "force of arms, of the enemies of the United States, be prevented "from making ſuch ſettlement, or be driven therefrom, and ſhall "perſiſt in his endeavours to make ſuch actual ſettlement; then, in "either caſe, he and his heirs ſhall be entitled, &c." Here, beſides, that the grammatical conſtruction of referring the word "perſiſt," to the laſt antecedent, is beſt anſwered; but the ſenſe of it is only applicable to ſettlements begun, and not to the condition of the Grantees. There are two members of the ſentence, one relates to the Grantees, who, it is ſuppoſed, may be prevented from making their ſettlements: The other to the ſettlers who are ſuppoſed to be driven away from the ſettlements. The latter words, as to them, are proper; as to the Grantees, who never began a ſettlement, improper. The Act, ſays, *in either caſe*, that is, if the Grantees are prevented from making their ſettlements, or if the ſettlers are driven away, and perſiſt in their endeavours to compleat their ſettlements, in either caſe they ſhall be entitled to the land,

I will not ſay this conſtruction is entirely free from doubt—if it was, there would be an end of the queſtion—

But taking it for granted, as it has been done at the bar, that the words relate to the Grantees, as well as the Settlers; yet, although inaccurate, with regard to the former, it ſeems to me, the Legiſlature could only mean to exact from the Grantees, their beſt endeavours to make the ſettlements, within the ſpace of two years from the date of their warrants; at the end of which time, if they have been prevented from complying with the terms of the law, by the actual force of the enemy, as they had actually paid for the land, they are then entitled to their patents. If the Legiſlature really meant differently, all I can ſay, is, that they have very unfortunately expreſſed their meaning.

The propriety of awarding a Mandamus, is another queſtion, which I mean not to diſcuſs, as I preſume a deciſion of a majority of the Court will make it unneceſſary.

YEATES, *Juſtice.*

I HAVE long hoped and flattered myſelf, that the difficulties attendant on the preſent motion, would have been brought before the juſtice and equity of the legiſlature for ſolution, and not come before the judicial authority, who are compelled to deliver the law as they find it written for deciſion; the queſtion has often occurred to our minds, under the act of 3d of April, 1792, which has ſo frequently engaged our attention in our weſtern circuits.

The Holland Company have paid to the ſtate, the conſideration

money of one thouſand one hundred and ſixty-two warrants, and the ſurveying fees, on one thouſand and forty-eight tracts of land; beſides making very conſiderable expenditures by their exertions, honorable to themſelves, and uſeful to the community, (as has been correctly ſtated) in order to effect ſettlements. Computing the ſums advanced, the loſt tracts, by prior improvements and interferences, and the quantity of one hundred acres granted to each individual for making an actual ſettlement on their lands; it is ſaid, that averaging the whole, between two hundred and thirty and two hundred and forty dollars, have been expended by the company, on each tract of land they now lay claim to.

The Indian war which raged previous to, and at the time of the paſſing of the law, and until the ratification of the treaty at Fort Granville, muſt have thrown inſurmountable bars in the way of thoſe perſons, who were deſirous of ſitting down immediately on lands, at any diſtance from the military poſts. Theſe obſtacles muſt neceſſarily have continued for ſome time after the removal of impending danger, from imperious circumſtances; the ſcattered ſtate of the inhabitants, and the difficulty of early collecting ſupplies of proviſions: Beſides, it is obvious, that ſettlements, in moſt inſtances, could not be made, until the lands were deſignated and appropriated by ſurveys, and more eſpecially ſo, where warrants have expreſs relation to others, depending on a leading warrant, which particularly locates ſome known ſpot of ground.

On the head of merit, in the Holland Land Company's ſparing no expence to procure ſettlements, I believe there are few diſſenting voices beyond the mountains: and one would be induced to conclude, that a variety of united, equitable circumſtances, would not fail to produce a proper degree of influence on the public will of the community. But we are compelled by the duties of our office, to give a judicial opinion, upon the abſtract legal queſtion—Whether if a warrant-holder, under the act of 3d of April, 1792, has begun to make his actual ſettlement, and is prevented from completing the ſame, "by force of arms, of the enemies of the United States, or "is driven therefrom," and ſhall make new endeavours to complete the ſame; but fails in the accompliſhment thereof, the condition of actual ſettlement and reſidence is diſpenſed with and extinguiſhed?

I am conſtrained, after giving the ſubject every conſideration in my power, to declare, that I hold the negative of the propoſition, for the following reaſons, collected from the body of the act itſelf:

1. The motives inducing the legiſlature to enact the law, are diſtinctly marked in the preamble, that "the prices fixed by law for "other lands," (than thoſe included in the Indian purchaſe of 1768) "are found to be ſo high, as to diſcourage *actual ſettlers* from pur-"chaſing and *improving* the ſame." 3 State laws, 209.

2. "The lands lying north and weſt of the river Ohio and Alle-"gheny, and Conewango creek, are offered for ſale to perſons who

" will *cultivate*, *improve* and *ſettle* the ſame, or *cauſe* the ſame to be " cultivated, improved and ſettled, at and for the price of £. 7 10, " for every hundred acres thereof." By § 2. The price of lands is thus lowered, to encourage actual ſettlements.

3. By § 3. " Upon the application of any perſon who may have " ſettled and improved, or is deſirous to ſettle and improve, a plan- " tation within the limits aforeſaid; there ſhall be granted to him a " warrant not exceeding four hundred acres," &c.

The application granted, is not to take up lands; but it must be accompanied, either by a previous ſettlement and improvement, or expreſſions of a deſire to ſettle and improve a plantation; and in this form all ſuch warrants have iſſued.

4. By § 5. " Lands *actually ſettled and improved*, prior to the " date of the entry of a warrant with the Deputy Surveyor of the " diſtrict, ſhall not be ſurveyed thereon; except for the owner of " ſuch ſettlement and improvement."

This marked preference of actual ſettlers over warrant-holders, who may have paid their money into the treaſury for a particular tract; even, perhaps, before any improvement of the land was meditated, ſhews, in a ſtriking manner, the intentions of the Legiſlature.

5. By § 8. " The Deputy Surveyor of the diſtrict, ſhall, upon " the application of any perſon, who has made an actual ſettlement " and improvement on theſe lands, ſurvey and mark out the lines " of the tract of land, not exceeding four hundred for ſuch appli- " cant."

The ſettlement and improvement alone, are made equivalent to a warrant; which may be taken out by ſection 10, ten years after the time of paſſing this act.

6. I found my opinion, on what I take to be the true and legitimate conſtruction of the § 9; in the cloſe of which is to be found the proviſo, from whence ſpring all the doubts on the ſubject.

It has been ſaid at the bar, that three different conſtructions have been put on this ſection.

1. That if the warrant-holder has been prevented by Indian hoſtilities, from making his ſettlement within two years, next after the date of his warrant, and until the 22d of December, 1795; (the time of ratification of General Wayne's treaty) the condition of ſettlement and reſidence is extinct and gone.

2. That though ſuch prevention did not wholly diſpenſe with the condition, it hindered its running within that period; and that the Grantee's perſiſting in his endeavours, to make an actual ſettlement and reſidence for five years, or within a reaſonable time thereafter, ſhall be deemed a full compliance with the condition: And,

3. That in all events, except the death of the party, the ſettlement and reſidence, ſhall precede the veſting of the compleat and abſolute eſtate.

Though ſuch great diſagreement has obtained, as to the true meaning of this § 9, both ſides agreed in this, that it is worded very inaccurately, inartificially and obſcurely—Thus it will be found towards the beginning of the clauſe, that the words "*actual ſettlement,*" are uſed in an extenſive ſenſe, as incluſive of reſidence for five years; becauſe its conſtituent parts are enumerated and deſcribed, to be by "*clearing, fencing and cultivating*, at leaſt two acres for "every hundred acres, contained in one ſurvey; erecting thereon, "a meſſuage for the habitation of man, and reſiding, or cauſing a "family to reſide thereon, for the ſpace of five years, next follow- "his firſt ſettling the ſame, if he or ſhe ſhall ſo long live." In the middle of the clauſe, the ſame words are uſed in a more limited ſenſe, and are coupled with the expreſſions "and reſidence," and in the cloſe of the ſection, in the proviſo, the ſame words, as I underſtand them, in a ſtrict grammatical conſtruction of the whole clauſe, muſt be taken in the ſame large and comprehenſive ſenſe, as they firſt conveyed; becauſe the terms "ſuch actual ſettlement," uſed in the middle of the ſection, are repeated in the proviſo, and refer to the ſettlement deſcribed in the foregoing part: and the words "actual ſettlement, as aforeſaid," evidently relate to the enumeration of the qualities of ſuch ſettlement: Again, the confining of the ſettlement to be within the ſpace of two years, next after the date of the warrant, ſeems a ſtrange proviſion. A war with the Indian natives ſubſiſted when the law paſſed, and its continuance was uncertain. The ſtate of the country might prevent the making of ſurveys for ſeveral years; and until the lands were appropriated by ſurveys, the preciſe places where they lay, could not be aſcertained generally.

Still I apprehend that the intention of the Legiſlature may be fairly collected from their own words. But I cannot accede to the firſt conſtruction, ſaid to have been made of the proviſo in this ninth ſection; becauſe it rejects as wholly ſuperfluous, and aſſigns no operation whatever, to the ſubſequent expreſſions "if any Grantee ſhall perſiſt in his endeavours," &c. which is taking an unwarrantable liberty with the law. Nor can I ſubſcribe to the ſecond conſtruction ſtated, becauſe it appears to me to militate againſt the general ſpirit and words of the law, and diſtorts its great prominent features in the paſſages already cited, and for other reaſons which I ſhall ſubjoin. I adhere to the third conſtruction, and will now again conſider the § 9. It enacts, in the firſt inſtance, that "no warrant or "ſurvey for lands, lying north and weſt of the rivers Ohio and Al- "leghany, and Conewango creek, ſhall veſt any title, unleſs the "Grantee has, prior to the date of ſuch warrant, made, or cauſed "to be made; or ſhall within the ſpace of two years next after the "date of the ſame, make, or cauſe to be made, an actual ſettle- "ment thereon, by clearing, &c. *Provided always, nevertheleſs,* "That if any ſuch actual ſettler, or any grantee, in any ſuch ori-

" ginal or ſucceeding warrant, ſhall by force of arms of the ene-
" mies of the United States, be prevented from making ſuch actual
" ſettlement, or be driven therefrom, and ſhall perſiſt in his endea-
" vours to make ſuch actual ſettlement as aforeſaid; then, in either
" caſe, he and his heirs, ſhall be entitled to have and to hold the
" ſaid lands, in the ſame manner, as if the actual ſettlement had
" been made and continued."

" Perſiſt" is the correlative of attempt or endeavour, and ſignifies " hold on," " perſevere," &c. the beginning words of the ſection, reſtrict the ſettlement, " to be within two years *next after* the " date of the warrant, *by clearing*, &c. and *by reſiding* for the ſpace " of five years, *next following* his firſt ſettling of the ſame, if he " or ſhe ſhall ſo long live," and in default thereof, annexes a penalty of forfeiture in a mode preſcribed; but the proviſo relieves againſt this penalty, if the Grantee is prevented from making ſuch ſettlement by force, &c. and ſhall *perſiſt in his endeavours* to make *ſuch* actual ſettlement, as aforeſaid. The relief, then, as I read the words, goes merely as to the times of two years next after the date of the warrant, and five years next following the party's firſt ſettling of the ſame; and the proviſo declares, that *perſiſting*, &c. ſhall be equivalent to a continuation of the ſettlement.

To be more intelligible, I paraphraſe the ninth ſection thus:— Every warrant-holder ſhall cauſe a ſettlement to be made on his lands within two years next after the date of his warrant, and a reſidence thereon for five years next following the firſt ſettlement, on pain of forfeiture by a new warrant. Nevertheleſs, if he ſhall be interrupted or obſtructed by external force, from doing theſe acts within the limited periods, and ſhall afterwards perſevere in his efforts in a reaſonable [time, after the removal of ſuch force, until thoſe objects are accompliſhed, no advantage ſhall be taken of him for the want of a ſucceſſive continuation of his ſettlement.

The conſtruction I have adopted, appears to me to reſtore perfect ſymmetry to the whole act, and to preſerve its due proportions. It affords an eaſy anſwer to the ingenious queſtion, propoſed by the Counſel of the Holland Company. If, ſay they, immediately after a warrant iſſues, a ſettler, without delay, goes on the ground the 11th April. 1792, and ſtays there until the next day, when he is driven off by a ſavage enemy, after a gallant defence; and then fixes his reſidence as near the ſpot, as he can conſiſtently, with his perſonal ſafety, Does the Warrantee looſe all pretenſions of equity? Or, ſuppoſe he has the good fortune to continue there, firmly adhering to the ſoil, for two or three years, during the Indian hoſtilities; but is, at length, compelled to remove by a ſuperior force: Is all to go for nothing, and muſt he neceſſarily begin again? I anſwer to both queries, in the negative; By no means. The proviſo ſupplies the charm of ſucceſſive years of reſidence; for every day and week he reſides on the ſoil, he is entitled to credit in his ac-

count with the Commonwealth: But, upon a return of peace, when the ſtate of the country will admit of it, after making all reaſonable allowances, he muſt reſume the occupation of the land, and compleat his actual ſettlement;—although a charity cannot take place according to the letter, yet it ought to be performed *cy-pres*, and the ſubſtance purſued. 2 *Vern.* 266. 2 *Fonb.* 221.

It has been objected, that ſuch a contract with the State, is unreaſonable, and hard on thoſe land-holders, and ought not to be inſiſted upon: It will be ſaid, in reply, they knew the terms before they engaged in the bargain, and muſt abide by the conſequences: The only queſtion is, whether the interpretations given of it be correct or not.

7. A due conformity to the proviſions of the act, is equally exacted of thoſe who found their preference to lands on their perſonal labour, as of thoſe who ground it on the payment of money. I know of no other diſtinctions between theſe two ſets of land-holders, as to actual ſettlement and reſidence; than that the claims of the former, muſt be limited to a ſingle plantation, and the labour be exerted by them, or under their direction; while the latter may purchaſe as many warrants as they can, and make, or cauſe to be made, the ſettlements required by law. *Addiſon*, 340, 341.

It is admitted, on all ſides, that the terms of actual ſettlement and reſidence, are, in the firſt place, precedent conditions, to the veſting of abſolute eſtates in theſe lands; and I cannot bring myſelf to believe, that they are diſpenſed with, by unſucceſsful efforts, either in the caſe of warrant-holders, or actual ſettlers. In the latter inſtance, our uniform deciſions have been, that a firm adherance to the ſoil, unleſs controlled by imperious circumſtances, was the great criterion, which marked the preference in ſuch caſes; and I have ſeen no reaſon to alter my opinion.

8. Laſtly, it is obvious from the preamble, and § 2, that the ſettlement of the country, as well as the ſale of the lands, were meditated by this law; the latter, however, appears to be a ſecondary object with the Legiſlature. The peopling of the country, by a hardy race of men, to the moſt extreme frontier, was certainly the moſt powerful barrier againſt a ſavage enemy.

Having been thus minute, and I fear tedious, in delivering my opinion, it remains for me to ſay a few words, reſpecting thoſe perſons who have taken poſſeſſion of part of theſe lands, ſuppoſing the warrants to be *dead*, according to the *cant word* of the day, and who, though not parties to this ſuit, are aſſerted to be implicated in our deciſion. If the lands are forfeited in the eye of the law, though they have been fully paid for, the breach of the condition can only be taken advantage of by the Commonwealth, in a method preſcribed by law. Innumerable miſchiefs, and endleſs confuſion, would enſue, from individuals taking upon themſelves to judge when warrants and ſurveys ceaſe to have validity, and making entries on

ſuch lands at their will and pleaſure. I will repeat what we told the jury in Morris' leſſee vs. Neighman and Shaines, "If the ex- "preſſions of the law were not as particular as we find them, we "ſhould have no difficulty in pronouncing that no perſon ſhould take "advantage of their own wrong, and that it does not lie in the "mouths of men, like thoſe we are ſpeaking of, to ſay the war- "rants are dead; we will take and withhold the poſſeſſion, and "thereby entitle ourſelves to reap benefits from an unlawful act." On the whole, I am of opinion, that the rule ſhould be diſcharged.

SMITH, *Juſtice.*

I HAVE had a full opportunity of conſidering the opinion delivered by my Brother *Yeates;* and as I perfectly concur in all its principles, I ſhall confine myſelf to a ſimple declaration of aſſent. I could not hope, indeed, to add to the argument; and I am certain I could not equal the language, which he has uſed on the occaſion.

BY THE COURT! Let the rule be diſcharged. (35)

(35) Since this deciſion was pronounced, the ſubject has been revived and agitated in various intereſting forms. In the winter of 1801—2, ſeveral petitions were preſented by the intruders to the Legiſlature, requeſting their interpoſition, but the Committee of the Senate to whom theſe petitions were referred, reported againſt them and admitted, that the controverſy belonged excluſively to the Courts of Juſtice. (N. O. in App.) But ſoon after this Report was made, a Bill was introduced, entitled "An Act, &c" (P.) which recites the exiſting controverſies, gives a legiſlative opinion againſt the claim of the warrantees, and inſtitutes an extraordinary tribunal, to hear and decide between the parties. The appearance of this Bill produced two remonſtrances from the Holland Company, but without effect. (Q. and R. in App.) As ſoon as it became a Law, the Attorney-General and the Counſel for the Company were invited to a conference with the Judges, on the carrying of it into effect; but, upon mature conſideration, the Counſel for the Company declined taking any part in the buſineſs, and aſſigned their reaſons in a letter addreſſed to the Judges, dated the 24th of June 1802. (S. in App.) An iſſue was then formed, by the direction of the Judges, which was tried at Sunbury on the 25th of Nov. following, before *Yeates*, *Smith*, and *Brackenridge*, Juſtices. The Counſel for the State, were the Attorney-General, and Meſſrs. W. Tilghman and Cooper; but no Counſel was oppoſed to them. The Charge, as delivered by Mr. Juſtice *Yeates*, will be found in the Appendix; (T) and the verdict, proceedings, and report of the Judges, which left the queſtion at large, under the letter (U.) It only remains to add, that the Holland Company have inſtituted ejectments, in the Circuit Court of the United States, which are now depending; and, in oppoſition to this meaſure, a Bill originated with and paſſed the Senate, but was loſt in the Houſe of Repreſentatives. In oppoſition to this Bill, the Holland Company preſented a Remonſtrance to both Houſes—and the diſſenting members of the Houſe of Repreſentatives entered a Proteſt againſt the bill's paſſing. The Bill, as it paſſed the Senate, with the Memorial, and reaſons of diſſent, and other proceedings, are contained in the Appendix (W).

APPENDIX.

Containing the Documents referred to in the preceding Report.

A.

The following is a List of the Members of the Holland Company, their Agents, and Assistants:

WILHEM WILLINK,
NICOLAS VAN STAPHORST,
PIETER STADNITSKI,
CHRISTIAN VAN EEGHEN,
HENDRIK VOLLENHOVEN,
RUTGERT JAN SCHIMMELPINNINCK,
Members.

PAUL BUSTI, Agent-General, residing in Philadelphia,
ROGER ALDEN, Agent, residing at Meadeville,
ALEXANDER M'DOWELL, Assistant to *Roger Alden*.

B.

The Act of the 3d of April, 1792.

AN ACT

For the Sale of the vacant Lands within this Commonwealth.

WHEREAS the moſt valuable lands within this Commonwealth, included within the purchaſe made from the native Indians in the year one thouſand ſeven hundred and ſixty-eight, have been taken up, located, and appropriated for the uſe of divers purchaſers, at prices heretofore eſtabliſhed by law, and thoſe which remain unſold and unſettled, being inferior in quality or ſituation, cannot be ſold at the ſame prices: And whereas the prices fixed by law for other lands belonging to the Commonwealth are found to be ſo high, as to diſcourage actual ſettlers from purchaſing and improving the ſame:

Section I. *Be it therefore enacted by the Senate and Houſe of Repreſentatives of the Commonwealth of Pennſylvania, in General Aſſembly met, and it is hereby enacted by the authority of the ſame,* That from and after the paſſing of this act, the price of all the vacant lands within the limits of the purchaſe made of the Indians in the year one thouſand ſeven hundred and ſixty-eight, and all preceding purchaſes, excepting always ſuch lands as have been previouſly ſettled upon or improved, ſhall be reduced to the ſum of fifty ſhillings for every hundred acres; and the price of vacant lands, within the limits of the purchaſe made of the Indians, in the year one thouſand ſeven hundred and eighty-four, and lying eaſt of Alleghany river and Conewango creek, ſhall be reduced to the ſum of five pounds for every hundred acres thereof; and the ſame ſhall and may be granted to any perſon or perſons applying for the ſame at the price aforeſaid, in the manner and form accuſtomed under the laws heretofore enacted, and now in force.

Sec. II. *And be it further enacted by the authority aforeſaid,* That from and after the paſſing of this act, all other lands belonging to this Commonwealth, and within the juriſdiction thereof, and laying north and weſt of the rivers Ohio and Alleghany, and Conewango creek, excepting ſuch parts thereof as heretofore have been, or hereafter ſhall be, appropriated to any public or charitable uſe, ſhall be, and are hereby, offered for ſale to perſons who will cultivate, im-

prove and ſettle the ſame, or cauſe the ſame to be cultivated, improved and ſettled, at and for the price of ſeven pounds ten ſhillings for every hundred acres thereof, with an allowance of ſix per centum for roads and highways, to be located, ſurveyed, and ſecured to ſuch purchaſers, in the manner herein after mentioned.

Sec. III. *And be it further enacted by the authority aforeſaid*, That upon the application of any perſon who may have ſettled and improved, or is deſirous to ſettle and improve, a plantation within the limits aforeſaid, to the Secretary of the Land-office, which application ſhall contain a particular deſcription of the lands applied for, there ſhall be granted to him a warrant for any quantity of land within the ſaid limits, not exceeding four hundred acres, requiring the Surveyor-General to cauſe the ſame to be ſurveyed for the uſe of the Grantee, his heirs and aſſigns, for ever, and make return thereof to the Surveyor-General's office, within the term of ſix months next following, the Grantee paying the purchaſe money, and all the uſual fees of the Land-office.

Sec. IV. *And be it further enacted by the authority aforeſaid*, That the Surveyor-General ſhall, with the approbation of the Governor, divide the lands thus offered for ſale into proper and convenient diſtricts, in ſuch manner as he may think expedient, ſo that the boundaries of each diſtrict, either natural or artificial, may be known, and appoint one Deputy-Surveyor for each diſtrict, who ſhall give bond and ſecurity, as is cuſtomary with other Deputy-Surveyors in this Commonwealth, and ſhall reſide within, or as near as poſſible, to his reſpective diſtrict; and every ſuch Deputy-Surveyor ſhall, within ſixty days next after his appointment, certify to the Surveyor General, the county, townſhip, and place, where ſuch Deputy-Surveyor ſhall keep his office open, for the purpoſe of receiving warrants, in order that all perſons who may apply for lands as aforeſaid, may be duly informed thereof; and every Deputy-Surveyor, who ſhall receive any ſuch warrant, ſhall make fair and clear entries thereof in a book, to be provided by him for that purpoſe, diſtinguiſhing therein the name of the perſon therein mentioned, the quantity of land, date thereof, and the day on which ſuch Deputy-Surveyor ſhall receive the ſame, which book ſhall be open at all ſeaſonable hours to every applicant, who ſhall be entitled to copies of any entries therein, to be certified as ſuch, and ſigned by the Deputy-Surveyor, the party paying one quarter of a dollar therefor.

Sec. V. *And be it further enacted by the authority aforeſaid*, That the deputy-ſurveyor ſhall, at the reaſonable requeſt and proper coſt and charges of the reſpective grantees, in ſuch warrants named, proceed to ſurvey the lands in ſuch warrants deſcribed, as nearly as may be, according to the reſpective priorities of their warrants; provided, that they ſhall not, by virtue of any warrant, ſurvey any tract of land, that may have been actually ſettled and improved prior to the date of the entry of ſuch warrant with the Deputy-Surveyor of

the diſtrict, except for the owner of ſuch ſettlement and improvement; and having perfected ſuch ſurveys, ſhall enter the ſame in a book; to be kept by the deputy-ſurveyor, and to be called the ſurvey book; and the ſame book ſhall remain in his office, liable to be inſpected by any perſon whatſoever, who ſhall demand to ſee the ſame, upon the payment of eleven pence for every ſearch; and the deputy-ſurveyor ſhall cauſe copies of any ſuch ſurvey to be made out, and delivered to any perſon, upon the payment of one quarter of a dollar for each copy.

Sec. VI. *And be it further enacted by the authority aforeſaid*, That in making any ſurvey by any Deputy-Surveyor, he ſhall not go out of his proper diſtrict to perform the ſame, and that every ſurvey made by any Deputy-Surveyor without his proper diſtrict ſhall be void and of non effect; and the Surveyor-General and his deputies, are hereby ſeverally directed and enjoined to ſurvey or cauſe to be ſurveyed, the full amount of land contained and mentioned in any warrant, in one entire tract, if the ſame can be found, in ſuch manner and form, as that ſuch tract ſhall not contain in front on any navigable river or lake, more than one half of the length or depth of ſuch tract, and to conform the lines of every ſurvey in ſuch manner as to form the figure or plot thereof, as nearly as circumſtances will admit, to an oblong, whoſe length ſhall not be greater than twice the breadth thereof; and in caſe any ſuch ſurvey ſhould be found to contain a greater quantity of land, than is mentioned in the warrant on which it ſhall be made, ſo that ſuch exceſs be not more than one-tenth of the number of acres mentioned in ſuch warrant, beſides the uſual allowance for roads and highways, the return thereof ſhall, nevertheleſs, be admitted, under the warrant, provided the party procuring ſuch return to be made, ſhall forthwith pay to the Receiver-General of the Land office, the price or value of ſuch exceſs or overplus land, at the ſame rate at which he paid for the land mentioned in the warrant.

Sec. VII. *And be it further enacted by the authority aforeſaid*, That every Deputy-Surveyor to be appointed by virtue of this act ſhall, within the month of February in the next year, make and return into the office of the Surveyor-General, plots of every ſurvey which he ſhall have made in purſuance of any warrant, connected together in one general draft, ſo far as they may be contiguous to each other, with the courſes and diſtances of each line, the quantity of land contained in each ſurvey, and the name of the perſon for whom the ſame was ſurveyed; and every ſucceeding year he ſhall make a like return of the ſurveys made in the year preceding.

Sec. VIII. *And be it further enacted by the authority aforeſaid*, That the Deputy-Surveyor of the proper diſtrict ſhall, upon the application of any perſon who has made an actual ſettlement and improvement on lands lying north and weſt of the rivers Ohio and Alleghany, and Conewango creek, and upon ſuch perſon paying the legal

fees, ſurvey and mark out the lines of the tract of land to which ſuch perſon may, by conforming to the proviſions of this act, become entitled by virtue of ſuch ſettlement and improvement: *Provided*, That he ſhall not ſurvey more than four hundred acres for ſuch perſon, and ſhall, in making ſuch ſurvey, conform himſelf to all the other regulations by this act preſcribed.

Sec. IX. *And be it further enacted by the authority aforeſaid*, That no warrant or ſurvey, to be iſſued or made in purſuance of this act, for lands lying north and weſt of the rivers Ohio and Alleghany, and Conewango creek, ſhall veſt any title in or to the lands therein mentioned, unleſs the grantee has, prior to the date of ſuch warrant, made, or cauſed to be made, or ſhall, within the ſpace of two years next after the date of the ſame, make, or cauſe to be made, an actual ſettlement thereon, by clearing, fencing and cultivating, at leaſt two acres for every hundred acres contained in one ſurvey, erecting thereon a meſſuage for the habitation of man, and reſiding, or cauſing a family to reſide thereon, for the ſpace of five years next following his firſt ſettling of the ſame, if he or ſhe ſhall ſo long live; and that in default of ſuch actual ſettlement and reſidence, it ſhall and may be lawful to and for this Commonwealth to iſſue new warrants to other actual ſettlers for the ſaid lands, or any part thereof, reciting the original warrants, and that actual ſettlements and reſidence have not been made in purſuance thereof, and ſo as often as defaults ſhall be made, for the time and in the manner aforeſaid, which new grants ſhall be under and ſubject to all and every the regulations contained in this act. *Provided always, nevertheleſs*, That if any ſuch actual ſettler, or any grantee, in any ſuch original or ſucceeding warrant, ſhall, by force of arms of the enemies of the United States, be prevented from making ſuch actual ſettlement, or be driven therefrom, and ſhall perſiſt in his endeavours to make ſuch actual ſettlement as aforeſaid, then, in either caſe, he and his heirs ſhall be entitled to have and to hold the ſaid lands, in the ſame manner as if the actual ſettlement had been made and continued.

Sec. X. *And be it further enacted by the authority aforeſaid*, That the lands actually ſettled and improved according to the proviſions of this act, to whoſeſoever poſſeſſion they may deſcend or come, ſhall be and remain liable and chargeable for the payment of the conſideration or purchaſe money at the rate aforeſaid, for every hundred acres, and the intereſt thereon accruing from the dates of ſuch improvements; and if ſuch actual ſettler, not being hindered as aforeſaid, by death, or the enemies of the United States, ſhall neglect to apply for a warrant for the ſpace of ten years after the time of paſſing this act, it ſhall and may be lawful to and for this Commonwealth to grant the ſame lands, or any part thereof, to others, by warrants, reciting ſuch defaults; and the grantees, complying with the regulations of this act, ſhall have, hold and enjoy, the ſame

to them, their heirs and aſſigns; but no warrant ſhall be iſſued in purſuance of this act, until the purchaſe money ſhall be paid to the Receiver-General of the Land-office.

Sec. XI. *And be it further enacted by the authority aforeſaid,* That when any caveat is determined by the Board of Property, in manner heretofore uſed in this Commonwealth, the patent ſhall, nevertheleſs, be ſtayed for the term of ſix months, within which time, the party againſt whom the determination of the Board is, may enter his ſuit at common law, but not afterwards; and the party, in whoſe favor the determination the Board is, ſhall be deemed and taken to be in poſſeſſion, to all the intents and purpoſes of trying the title, although the other party ſhould be in actual poſſeſſion, which ſuppoſed poſſeſſion, ſhall, nevertheleſs, have no effect upon the title; at the end of which term of ſix months aforeſaid, if no ſuit is entered, a patent ſhall iſſue according to the determination of the Board, upon the applicant producing a certificate of the Prothonotary of the proper county that no ſuit is commenced, or if a ſuit is entered, a patent ſhall, at the determination of ſuch ſuit, iſſue, in common form, to that party in whom the title is found by law; and in both caſes, the patent ſhall be and remain a full and perfect title to the lands againſt all parties and privies to the ſaid caveat or ſuit; ſaving, nevertheleſs, to infants, femes coverts, perſons beyond ſea, non compotes mentes, and others, under diſabilities, their reſpective rights, until twelve months after ſuch diſabilities are removed.

Sec. XII. *And be it further enacted by the authority aforeſaid,* That no direct taxes ſhall be levied, aſſeſſed, or collected, for the uſe of this Commonwealth, upon or from any of the lands or tenements, lying north or weſt of the purchaſe made of the Indians, in the year one thouſand ſeven hundred and ſixty-eight, or the perſonal eſtate found thereupon, for the full ſpace or term of ten years, from and after the paſſing of this act.

Sec. XIII. *And be it further enacted by the authority aforeſaid,* That the following tracts of land ſhall be reſerved for the uſe of the Commonwealth, that is to ſay, at Preſqu'iſle, formed by Lake Erie, the iſland or peninſula which forms the harbour, and a tract extending eight miles along the ſhore of the lake, and three miles in breadth, ſo as to include the tract already ſurveyed, by virtue of a reſolution of the General Aſſembly, and the whole of the harbour formed by the ſaid Preſqu'iſle, at the mouth of Harbour creek, which empties into the Lake Erie, and along the ſhore of the lake, on both ſides of ſaid creek, two thouſand ſaid acres.

Sec. XIV. *And be it further enacted by the authority aforeſaid,* That all the lands within the triangle on Lake Erie, purchaſed from the United States, ſhall be taken and deemed, and they are hereby declared to be, within the limits of the county of Alleghany.

Sec. XV. *And be it further enacted by the authority aforeſaid,* That it ſhall and may be lawful to and for the holder or holders of

any unſatisfied warrant and warrants, heretofore iſſued for lands, agreeably to the ſeventh ſection of the act, entitled, "An Act to alter and amend an Act of Aſſembly, entitled, "An Act for opening the Land-office, for granting and diſpoſing of the unappropriated lands within this State," paſſed on the twenty-firſt day of December, in the year one thouſand ſeven hundred and eighty-four, to locate the quantity of land for which ſuch unſatisfied warrant and warrants was and were granted, in any diſtrict of vacant and unappropriated land within this Commonwealth; provided the owner or owners of ſuch unſatisfied warrants ſhall be under the ſame regulations and reſtrictions, as other owners of warrants taken for lands lying north and weſt of the Alleghany river and Conewango creek, are made ſubject by this act, the ſaid recited act, or any other act or acts of the General Aſſembly, to the contrary thereof in anywiſe notwithſtanding.

WILLIAM BINGHAM, *Speaker,*
of the Houſe of Repreſentatives.

SAMUEL POWELL, *Speaker,*
of the Senate,

Approved, April the 3d, 1792.

THOMAS MIFFLIN, *Governor,*
of the Commonwealth of Pennſylvania.

C. 1.

ALEXANDER M'DOWELL'S *Deposition.*

IN June, 1793, I was appointed Deputy-Surveyor, of Diſtrict, No. 7, weſt of the Ohio and Alleghany rivers, and Conewango creek, in Alleghany county; but, from repeated information, being convinced of the hoſtile conduct of the Indians, I did not attempt going into my diſtrict to make any ſurveys that year. In the latter end of May, or beginning of June, 1794, I was in this city, and met with John Adlum, who had put a number of warrants into my hands to be executed. Mr. Adlum purpoſed to give me an additional compenſation, excluſive of the fees allowed by law, on each ſurvey, provided I would undertake to furniſh proviſions, &c. and ſave him the trouble of attending, in perſon: This I refuſed, requiring only the fees allowed by law. In July, 1794, I ſet out

from Frankſtown, where I then reſided, prepared to execute all warrants that were entered with me, and went the length of Col. Charles Campbell's, on Blacklick, where I met with a Mr. Jones, who had been employed by John Adlum, to purchaſe and forward proviſions for his uſe. Mr. Jones informed me that the Indians, about three days before, had attacked a boat or boats going down the Kiſkamenitas, and had killed one man, and wounded two other perſons; alſo, that the Indians had killed two men, about twenty miles ſouth of Fort Franklin, on the road leading from Franklin to Pittſburgh, and that he thought it unſafe to go any further. I then returned to Frankſtown, and ſtayed until ſome time in Auguſt, when Mr. John Adlum called on me to go out to the diſtrict to ſurvey. I accordingly went out to Fort Franklin to meet Mr. Adlum, and after detaining there a few days, I ſet out to the diſtrict to ſurvey. During the time I was in the woods, I was informed, that the Indians had fired on a man, near Caſſewago, now Meadeville; alſo, that they had killed a ſoldier, belonging to Capt. Heath's company, who commanded at Fort Franklin. As the Indians appeared ill-natured, and much diſſatisfied, on the 7th or 8th of September 1794, John Adlum, (who had been at Cornplanter's town, to find out how the Indians were diſpoſed) ſent out a man, of the name of Smith, and an Indian, to inform me, that Cornplanter, and his Indians, were determined to go to WAR, and that Cornplanter requeſted him to ſend word to all the Surveyors who were in the woods, to quit ſurveying before the 13th of September, or they might expect to be attacked. I, accordingly, left the woods, and returned to Fort Franklin where I found Capt. Heath, the commanding officer, expected to be attacked, and the few inhabitants, who reſided in that place, much alarmed. Finding it improper to attempt ſurveying, any more, owing to the hoſtile diſpoſition of the Indians, on the 20th of September, we left Fort Franklin. In June, 1795. I returned to Fort Franklin, in order to commence ſurveying: When I got oppoſite the mouth of French creek, on the eaſt ſide the Alleghany river, and not more than one mile from Fort Franklin, I met a number of people, who were in canoes, and appeared to be haſting down the Alleghany river, I enquired of them the cauſe of their going; they informed me they were going to Pittſburgh; alledging, at the ſame time, as their reaſon for ſo doing, that they did not think it ſafe for them to remain in that country, as the hoſtile Indians had lately killed two men in the neighbourhood of Caſſewago, now Meadville, and, that the whole country were alarmed; which information I found to be true, on my arrival at Fort Franklin—the people there being much alarmed, notwithſtanding there was a garriſon kept at that place. Finding it unſafe to ſet out to the woods, I detained at Fort Franklin for ſome time, until Meſſrs. Irwin and Ellicott, who were appointed to lay out the reſerved towns of Franklin, Waterford, Erie, and Warren, would come forward,

knowing that they had fifty men with them, to guard them, while executing their appointment, expecting, that when they would come forward, it would have some effect to quiet the Indians; and, in the same time, I employed Nicholas Rosegrant, (who understood the Indian language) to go to Cornplanter's town to inform Cornplanter that I was authorised by the Governor of the Commonwealth of Pennsylvania, to survey the several tracts of land granted him by Act of Assembly: Cornplanter, on having this information, met me near Fort Franklin, and returned with me up the Alleghany river, until I made all his surveys. While I was with him, I heard of no alarms, with the Indians; but, on my return down to Franklin, several parties, which were in the woods, were frequently alarmed, and afraid to travel through the country, but in large parties; and none thought it safe to settle in the country, unless near garrisons. In April, 1796, after I had executed the warrants which were entered with me, I was applied to by Mr. Cazenove, the then agent for the Holland Land Company, to assist in getting the lands of the said Company settled, according to law. I agreed with him, and went out to Fort Franklin, where a supply of provisions, and farming utensils, were sent me, at the expence of the said Company, with instructions to give a gratuity of one hundred acres of land out of each tract, and to deliver out provisions, and other utensils, to those who would settle and improve on the one hundred acres, which they got *gratis*. In the course of this year, but little was done, as people, in general, were fearful, in coming forward to settle, owing to the disturbances which had been occasioned formerly by the Indians. In the year 1797, a large quantity of provisions, and farming utensils, were forwarded to me at Fort Franklin, at the expence of the Holland Company, which I was directed to deliver out to settlers; and, also, to give them one hundred acres of land, as a gratuity. I was also directed to open roads, build store-houses and mills, for the benefit of settlers, which I did, at a great expence. In the year 1798, a quantity of flour, to the amount of three hundred barrels, eighteen thousand weight of bacon, pork and beef, a quantity of sugar, chocolate, and all kinds of farming utensils were forwarded to me at Fort Franklin, at the expence of the Holland Company, with instructions to give one hundred acres of land *gratis*, to those who would settle and improve the same; also, to furnish them with a supply of provisions, until they could raise grain, &c. for their families, and (if wanted) to furnish them with farming utensils.—— These measures have been pursued in the years 1799 and 1800, and the whole of the lands belonging to the Holland Company were put under the care of agents, for the purpose of having them settled, on the terms mentioned—Under these terms, extensive settlements are made, houses and stores erected, mills built, roads cut, improvements made, to an extent commensurate with the objects in view, and in value far beyond what private individuals could afford to expend.

(Signed) ALEXANDER M'DOWELL.

ON this twentieth day of December, one thouſand eight hundred, before me, Robert Henry Dunkin, Notary Public, for the Commonwealth of Pennſylvania, duly commiſſioned and ſworn, reſiding in the city of Philadelphia, and, by law, authoriſed to adminiſter oaths and affirmations, perſonally came and appeared, Alexander M'Dowell, in the annexed affidavit mentioned, and being duly ſworn, on his oath, ſays, that the facts contained in the annexed, are juſt and true, according to the beſt of his knowledge and belief: an act of which, being required of me, I have granted this one, under my hand and ſeal of office, at Philadelphia, the day and year above mentioned.

QUOD, *Atteſtor.*

(L. S.) ROBERT HENRY DUNKIN,
Notary Public.

C. 2.

CHARLES CAMPBELL'S *Depoſition.*

ON this eleventh day of February, in the year of our Lord one thouſand ſeven hundred and ninety-ſix, before me, Robert Henry Dunkin, Notary Public, for the Commonwealth of Pennſylvania, duly commiſſioned and ſworn, reſiding in the city of Philadelphia, and by law authoriſed to adminiſter oaths and affirmations, perſonally came and appeared, Col. Charles Campbell, Brigade Inſpector, of the county of Weſtmoreland, who, being duly ſworn, on his ſolemn oath, depoſes, declares, and ſays he well recollects, That, on or about the laſt day of May, one thouſand ſeven hundred and ninety-five, he, this deponent, had ſome hands at work on the weſt ſide of the river Alleghany, in the county of Alleghany, who were informed, that two perſons had been killed by the hoſtile Indians, near to Preſqu'iſle: That, on their receiving this information, they returned to this deponent, who, being ignorant of the news, had proviſions on the way, going to the ſame people which they met on the way, and returned with the ſame to this deponent: That on or about the ſame time, two families came from the weſt of the river Alleghany into the county of Weſtmoreland, alledging, as their reaſon for ſo doing, that they were fearful of the Indians, and that unleſs this deponent would ſend a guard to protect them, they would not return: The Scouts of the United States being then at the mouth of Buffaloe creek, and alſo up the Alleghany, on the weſt ſide: That as ſoon as the alarm was ſpread,

this deponent was neceſſitated to bring the Scouts cloſer together;—that, afterwards, this deponent, in the courſe of the ſummer, heard of three other people being killed, and one taken priſoner, by the Indians, on the weſt ſide of the Alleghany river: The alarm of the Indians, being on the frontiers, having become general, That this deponent had frequently, in the Fall of the year one thouſand ſeven hundred and ninety-five, heard numbers of people in the county of Weſtmoreland ſay, that the time preſcribed by the Act of the Legiſlature of this State, paſſed on the third day of April, one thouſand ſeven hundred and ninety-two, for making ſettlements and improvements of lands north and weſt of the rivers Ohio and Alleghany, and Connewango creek, had expired, and that they would go and take poſſeſſion of any tract or tracts of land which they liked, without regard to any prior claim or title derived from warrants or improvements, the date of which warrants or improvements were two years: And this deponent knows, that a perſon of the name of Jacob Young, actually took poſſeſſion of a place ſituate on Buffaloe; and he has heard, and verily believes, that another place has been taken poſſeſſion of by a perſon of the name of Thomas Lamont, at the mouth of Limeſtone; both of which places, this deponent verily believes, belongs to other perſons, by virtue of prior warrants or improvements.

(Signed) CHARLES CAMPBELL.

Sworn, as above, before me,

QUOD, *Atteſtor.*

(L. S.) ROBERT HENRY DUNKIN,
Notary Public.

C. 3.

DAVID MEADE'S *Deposition.*

ON this twelfth day of February, one thouſand ſeven hundred and ninety-ſix, before me, Robert Henry Dunkin, Eſquire, Notary Public, for the Commonwealth of Pennſylvania, duly commiſſioned and ſworn, reſiding in the city of Philadelphia, and by law, authoriſed to adminiſter oaths and affirmations, perſonally came and appeared, David Meade, of the county of Alleghany, in the State of Pennſylvania, and being duly ſworn, on his ſolemn oath,

depoſes, declares, and ſays, That during the ſecond week of June, this deponent was in Pittſburgh, attending the Court, he received letters from different people in Meade's ſettlement, otherwiſe Caſſewago, informing him, that from their ſituation, from the Indians, they having killed two men in the neighbourhood of the town, they wiſhed this deponent to uſe his influence in having the Militia enrolled for the protection of the ſettlement, which was accompliſhed, and remained under enrollment about three months; and that from information received by this deponent, he verily believes, two other men, were, previous to that time, killed by the hoſtile Indians, in the neighbourhood of Preſqu'iſle: That as ſoon as this deponent returned to Caſſewago, which was in the courſe of two or three weeks, he found that the people had removed into the town; and when it was neceſſary for them to go to work, they went in parties, armed; and which precaution gradually diminiſhed, until the time of the diſcharge of the Militia that were enrolled: That this deponent verily believes, from information received by him, that the Camp of William Powers, Deputy-Surveyor of the ſecond diſtrict, was, whilſt either him, or ſome of his deputies, were ſurveying, broken up, a horſe killed, and a man of the name of Thompſon taken priſoner who was carried to Detroit by the Indians, and who this Deponent afterwards ſaw on his return, he having been releaſed at Detroit. And this deponent verily believes they were weſtern Indians, that during this time the friendly Indians ſcarcely came into the ſettlement, being fearful that the Whites would retaliate on them, not being able to diſtinguiſh between them and the hoſtile Indians.

(Signed) DAVID MEADE,

Sworn before me,

QUOD, *Atteſtor.*

(L. S.) Signed, ROBERT HENRY DUNKIN.

C. 4.

ROGER ALDEN'S *Deposition.*

The property claimed by the Holland Land Company, weſt and northweſt of the Ohio and Alleghany rivers and Conewango creek, is ſituated in Diſtricts No. 1, 2, 3, 6, 7. and was purchaſed under 1162 warrants:—143 dated in April 1792, 819 dated in April 1793, and 200 dated in Auguſt 1793.

When official evidence was obtained, that part of the ſurveys were completed an agent was immediately appointed and ſent into that country for the expreſs purpoſe of ſettling, improving and cultivating the lands, and was empowered to do every thing that the law demanded, and with the aid of the reſpective deputy ſurveyors to ſelect proper places for ſtore houſes and mills, and to examine and to determine what roads were neceſſary for opening a communication between the ſeveral tracts of land included under the warrants.

Upwards of 5000 Dollars were expended in the ſummer and fall of the year 1795, for wages and expenſes of ſeveral perſons employed, for labourers, proviſions and materials for building, but without producing many beneficial effects, as the murders committed by the Indians in the neighbourhood of French creek that ſeaſon, alarmed all thoſe who had viſited the country in the ſpring, and deterred others from going out who were making preparation to ſettle there, when all danger from the hoſtile Indians was removed. With the aid of a ſmall ſettlemement on French creek and ſome perſons from Lycoming county who were out in the fall to examine the ſituation of their lands a large ſtore was erected by the Holland Company at Caſſewago, ſince called Meadeville, began in September, 1795, and under a good ſhingled roof, in the month of November following, and to ſerve as a place of depoſit for proviſions and implements of huſbandry, and other things neceſſary for carrying on the ſettlement the enſuing year, in caſe there was no further moleſtation from the Indians.

In the year 1796, every poſſible exertion was made for the ſupport of all thoſe who were diſpoſed to make a permanent reſidence on their lands. A large quantity of proviſions and farming utenſils were purchaſed at Pittſburgh, and ſent into this country, as early as the ſeaſon would permit. Large ſums of money were advanced, under different contracts, for tranſporting families, and very liberal encouragement was given to ſettlers, by furniſhing them with proviſions, and many of the neceſſaries for cultivating and clearing land and for houſe-keeping; and a free grant or donation of 100 acres of land to every perſon who would enter into contract and engagements for making the improvements and reſidence required by law. Great ſucceſs attended the operations of this year; and to defray the expences, the ſum of 22,383 dollars and 18 cents, was advanced by the Holland Company.

The year 1797, was diſtinguiſhed by ſtill greater exertion. Every tract of land was put under the direct charge of particular agents, or under contract, at a great expence, with perſons who engaged to make the ſettlements required by law. The ſum of 36,047 dollars and 58 cents, was advanced by the Holland Company, for the expences of this year; and the farther ſum of 26,666 dollars and 66 cents, was paid for ſecuring the claims to 162 tracts, and for compleating the improvements on 138 tracts, in addition, making, in the whole, 300 tracts.

A perſeverance, more ſtrenuous, was made in the year 1798, and at an expence nearly equal, but not ſo effectual, as the preceding year. The ſum of 35,854 dollars and 81 cents, was expended this year, for ſecuring and perfecting the titles, opening roads for the convenience, and erecting mills for the benefit and accommodation of the ſettlers, and for other objects, to enrich and populate the country. Reports were circulated, very unfavourable to the meaſures purſued by the warrant-holders, which had the effect to prevent many new engagements being made with ſettlers. The very liberal offers made by the proprietors, were uſed as arguments, that the lands were forfeited, or they would not make ſuch ſacrifices of land and money.

The ſum of 46,855 dollars and 85 cents, was expended in the year 1799, for continuing the ſettlements; comprehended under the ſalaries of agents, wages for labourers, purchaſing proviſions, repairs of mills, opening and finiſhing roads, and for patenting fees for 876 warrants.

The patents were iſſued upon certificates of the Deputy-Surveyors and Magiſtrates, conformable to an order of the Board of Property, founded upon facts, that the enemies of the United States had prevented a compliance with a part of the demands of the law of the 3d of April, 1792, and that the warrant-holders had perſevered to make the ſettlements required: And, notwithſtanding the grant of patents, the ſame meaſures were continued, and large advances were made, that no room might be left to queſtion whether the Holland Company had perſiſted in their beſt endeavours to do what the moſt ſevere conſtruction of the law demanded.

Similar meaſures are purſued the preſent year, that the ſettlers may have every aid to compleat their engagements, and debts due by them to contractors under the Company, have been purchaſed, in order to extend the payments, and to prevent any injury to them, by being compelled to make immediate payment. A large ſum of money has been advanced for this purpoſe, and for ſupplying the ſettlements with proviſions and other neceſſaries, and for ſalaries and wages of perſons employed under different occupations, and whoſe duty is ſolely confined to making and extending the ſettlements within the five diſtricts above named. Nor are the benefits confined to ſettlers on the lands of the proprietors claimed under the above recited warrants. Many have acknowledged the favours they have received from a ſupply of proviſions and of farming utenſils from the ſtores provided for ſettlers. And many diſintereſted perſons, and many who have an intereſt in theſe lands, either by purchaſe or gratuities, can give ample teſtimony, that the Holland Land Company has made every poſſible exertion for a full and perfect compliance with the letter and ſpirit of the law of the 3d of April, 1792.

To theſe great ſacrifices it may be added, that the company have loſt upwards of 100 warrants, ſome from an interference with improvement rights made after the date of the warrants, and ſome after the warrants were placed in the hands of the Deputy Surveyors. The company has never entered a ſingle caveat, nor had one diſpute, except juſtified by a warrant, that was ſpecially located and actually ſurveyed and returned. Alſo, that 163 warrants in Diſtricts No. 1, and No. 6, were ſo incorrectly ſurveyed, that it was impoſſible to aſcertain the particular tracts and the land actually returned, comprehended a conſiderable part of the 10th Donation Diſtrict, and the ſame have been re-ſurveyed by order of the Board of Property at a great expenſe, and with the loſs of 14 warrants, and that one other warrant will be deficient about 300 acres. And as a large proportion of theſe tracts were given to ſettlers under contracts, to make the ſettlements and improvements required, it now appears, that in ſome caſes, two perſons are placed on the ſame tract, and other tracts intended to have been included in the contracts are left vacant. The exertions made and the expence incurred to ſettle and improve theſe tracts, were equal, and in ſome reſpects greater than any part of the lands of the company, and were calculated to embrace the whole of the ſurveys. Of the above mentioned 163 warrants, 61 were ſurveyed and returned in Diſtrict No. 1. of which the 11 following are loſt, viz. David Pym, Robert Parks, George Parks, Paul Parks, Levi Parks, Frederick Parks, Peter Ink, James Ink, William Ink, Robert Pim, and Richard Pim, and one in the name of Alexander Cochran, is deficient near three hundred acres. And the following 49 are re-ſurveyed according to the order of the Board of Property, and returned, viz. Thomas Parks, Mark Parks, Stephen Parks, Simon Parks, Elihu Parks, Iſaac Ink, Moſes Parks, Amos Parks, Owen Parks, Caleb Ink, Philip Ink, Daniel Ink, Iſaac Parks, Iſaac Pim, Robert Ink Jacob Ink, Jacob Parks, Jeliu Parks, Richard Parks, Henry Parks, James Parks, Jacob Pim, Hugh Pim, Daniel Parks, Charles Ink, Henry Ink, David Ink, Henry Pim, Joſeph Pim, George Ink, David Parks, Stephen Parks, William Parks, Hugh Parks, John Parks, Samuel Ink, Thomas Ink, George Pim, Saul Pim, Samuel Parks, Godfrey Parks, Benjamin Ink, John Ink, Joſeph Ink, Francis Parks, Jeſſe Parks, Andrew Parks, Peter Pim, and Samuel Pim. And 102 warrants were ſurveyed and returned in Diſtrict No. 6, of which the following 3 are loſt, viz. Luke Ryne, John Ryne, and Jaſper Ryne: And the following 99 are reſurveyed according to the order of the Board of Property and returned, viz. Stephen Pim, Joſiah, Pim, Amos Pim, Solomon Pim, Charles Rea Iſaac Rea, James Rea, Grace Rea, Caleb Able, Henry Able, Paul Betz, Moſes Betz, Ezra Betz, William Rea, Charles Rea, Jeſſe Rea, Rebecca Rea, Phœbe Rea, George Able, Robert Able, Owen Betz, Kirk Betz, Iſrael Betz, Robert Rea, Jehu Pim, Benjamin Pim, Owen Pim,

Titus Pim, Henry Rea, junr. Rachel Rea, Amos Rea, Charles Able, Simon Able, Andrew Betz, Conrad Betz, Elihu Betz, Samuel Rea, Daniel Rea, Amos Ryne, Andrew Ryne, Samuel Rea, Iſrael Pim, Walker Pim, Roger Pim, Matthew Pim, Samuel Rea, jun. Sarah Rea, Lydia Rea, Laura Rea, Enoch Able, Peter Able, Thomas Betz, Nimrod Betz, Edward Betz, Simon Rea, Jehu Rea, Paul Ryne, Job Ryne, Henry Ryne, Jeſſe Pim, William Pim, Daniel Pim, Mark Pim, Amos Rea, Enos Able, David Able, John Betz, Nathan Betz, Comly Betz, Paul Rea, James Rea, Roger Ryne, Saul Ryne, George Rea, Jaſper Pim, Aaron Pim, Caleb Pim, Luke Pim, Moſes Pim, Caleb Rea, Mary Rea, Hannah Rea, Edward Able, Daniel Able, Peter Betz, William Betz, Eluad Betz, Peter Rea, John Rea, Edward Ryne, David Ryne, Hannah Pim, Eliza Rea, John Pim, Levi Pim, Thomas Pim, Charles Pim, Luke Ryne, and John Ryne.

From the preceding ſtatements it appears, that the Holland Land Company has advanced, in the courſe of five years, for the purpoſe of making ſettlements on all their lands weſt of Alleghany-river, within the Commonwealth of Pennſylvania, including ſalaries for agents, fees for patented land, and other objects, for ſecuring and perfecting their titles, the ſum of Dollars 172,108 8 cts.

To which add money already advanced for the payment of taxes, and the expences of the preſent year - - - - 8,290

Alſo, the purchaſe-money - - 222,071 10

Total Dollars 403,169 18

To this add the value of the land given as a gratuity to ſettlers, and the whole will demonſtrate what expenſive and perſevering exertions have been made by the Holland Land Company to perfect and ſecure their title to theſe lands.

The ſubſcriber to theſe ſeven pages, written with his own hand, was appointed on the 15th day of June, 1795, principal agent for managing the buſineſs of the Holland Land Company within the diſtricts firſt mentioned, and has been continued in that employment ever ſince, and teſtifies of his own knowledge to advances made by the Holland Land Company of upwards of one hundred and ſixty-five thouſand dollars; and that the other ſtatements are true and correct, according to the beſt of my knowledge and belief. Witneſs my hand this 16th day of July, 1800.

(Signed) ROGER ALDEN.

Sworn and ſubſcribed,
16th July, 1800,
before me,
(Signed)
THOMAS SMITH.

I CERTIFY, that the foregoing is a true copy of Roger Alden's Depoſition, filed in the Caſe of the Commonwealth of Pennſylvania verſus Tench Coxe, Eſquire, as the ſame remains of record in the office of Edward Burd, Eſquire, Prothonotary of the Supreme Court of the Commonwealth aforeſaid.

(L. S.) IN WITNESS whereof, I have hereunto ſet my hand and affixed the ſeal of ſaid Supreme Court, at Philadelphia, the fifth day of Auguſt, in the year of our Lord MDCCCIII.

JOHN ADLUM'S *Deposition.*

THE COMMONWEALTH, *vs.* TENCH COXE. } *In the Supreme Court,* MANDAMUS.

JOHN ADLUM being duly ſworn, depoſeth and ſaith, that the deponent ſold to the late James Wilſon Eſquire, part of the locations which the Holland Company afterwards purchaſed, ſituate in Alleghany County, and in the latter end of Auguſt, or in the month of September 1793, the deponent was by Mr. Cazenove informed that the warrants were paid for. In December 1793, deponent went to the Surveyor General's office, and requested the warrants to be directed to the ſeveral deputy ſurveyors according to their diſtricts. There was ſo much buſineſs in the office that the deponent could not get it done during that winter, and in the ſpring following the deponent ſpecially employed Mr. Parker, with the permission of the Surveyor General, as he was not a clerk in the office, to do the writing part. In the month of April 1794, this buſiness being accomplished, the deponent ſent out all the warrants by particular meſſengers to the reſpective deputy ſurveyors, and contracted with William Powers and Thomas Reese, to execute them in their diſtricts. The deponent followed in the latter end of May, or beginning of June, to conduct and direct the ſurveying of the warrants in the remaining diſtricts. On his way to Fort Pitt he met the ſaid Reese and Powers coming in, who ſaid ſeveral things to diſcourage the deponent from going further, mentioning that ſeveral perſons had been killed in the neighbourhood of Fort Franklin by the Indians, and that a boat in the Alleghany or Kiſkamenitas had been fired on by them, and ſeveral perſons killed and wounded, and

that they had come in from their diſtricts without finiſhing their buſineſs, through fear of the Indians. In conſequence of this information, a number of the deponents hands left him at Greenſburgh. To thoſe who remained the deponent was compelled to give additional wages to induce them to continue with him. The deponent on his arrival at Fort Pitt was adviſed by his friends there, not to proceed as the danger was great. The deponent on this armed moſt of his hands with rifles, and proceeded to Fort Franklin on French Creek, where all the foregoing reports were corroborated, and one of the deponents aſſiſtants who had been ſent out to take charge of proviſſions, informed him he had aſſiſted in the burial of three perſons who had been killed by the Indians. The deponent found at Fort Franklin an Indian who had been ſent by the Senecas to call in their hunting parties, in conſequence of which a number of theſe parties had collected at Fort Franklin, previous to their return to their towns. The deponent applied to the perſons who were ſaid to be their chiefs to know whether it would be ſafe to go on with the ſurveying—they replied, there was no war yet with the Senecas but times appeared as if they were going to be very bad. The deponent then aſked if it would be ſafe to ſend out the ſurveying parties, they replied that the deponent might venture, but they could not give a decided anſwer till they went up to their towns. The deponent then aſked if he put himſelf in their power and under their protection, and went up with them to their towns, whether they would return him ſafe to Fort Franklin. After ſome conſultation, they replied, they could not promiſe as times appeared to be growing bad, but that if the deponent went with them, they would return him ſafe if they could, or at any rate they would ſhare his fate. The deponent anſwered, he would go with them, and accordingly went. When the deponent arrived at their towns he found their young men painted and decorated in their war ſtile; there appeared to be every preparation for war. The deponent told the buſineſs he came on, and aſked permiſſion to ſurvey, and exhibited Howells map of Pennſylvania, and pointed out the part of the country he wiſhed to ſurvey; Cornplanter who ſpoke, there being ſeventy or eighty Indians collected mentioned he did not know how, ſoon times would be bad, if the Preſident gave back the country they aſked, all would be well, but if not times would be bad immediately, all depended on this anſwer. The deponent replied he had come out at great expence, and part of the country he wiſhed to ſurvey did not come within the part they claimed and that he underſtood Col. Pickering was appointed to treat with them, and as it would be ſometime before he would arrive, the deponent begged permiſſion to ſurvey in the part that did not interfere. After ſome conſultation they laid a ſtick acroſs the map from the mouth of Conewango to Caſſewago on French creek, and ſaid that he might ſurvey on the ſouth of that line until he heard further from them. The Deponent accordingly proceeded on his

ſurveying and was not interrupted; but a ſoldier being killed near Fort Franklin the Deponent went up a ſecond time to the town to aſcertain whether they continued in the ſame diſpoſition as when he left them: he remained there a number of days.—At that time nineteen Indians came from the north ſide of the lake whoſe leader informed Deponent they were a deputation from eight different tribes to inform the Six Nations that if they went to war with the White People they would aſſiſt them. The Deponent then felt anxious for his own people, engaged in ſurveying who were ſcattered in different parts of the country, and demanded an explicit anſwer to know whether he and his people were ſafe. They held a council and afterwards informed the Deponent in council, that as he had placed ſo much confidence in them, he and his party ſhould be ſafe and might go on until he heard from them, that as ſoon as they heard from Col. Pickering they would ſend him word, and if war took place they would give him and his party a guard to conduct them ſafe to the frontiers. The Deponent returned to Fort Franklin and in a few days afterwards an expreſs arrived from Cornplanter for the Deponent, informing him that Col. Pickering had arrived at Canandaque, and requesting him to come up to their town immediately. The Deponent went up accordingly: While there, the nineteen Indians before-mentioned with a number of the Six Nations moſtly Senecas were diſpatched towards our frontiers to kill Elk and Deer to make proviſion for themſelves, in caſe they were ordered to make a ſtroke at the ſettlements, and to wait there for further inſtructions. The Deponent was called into the council to hear the ſaid directions given, and that day an Indian was ſent to the Indians aſſembled at Buffalo creek to inform them it was the opinion of the council they ſhould not go to Canandaque to treat with Col. Pickering, but to invite him to come to them at Buffalo creek, which if he refuſed they would look upon it that he had it not in his power to give them up their land, and they would immediately order the war party ſent out as aforeſaid (who were preſent in council when the meſſage was given) to make a ſtroke. The war party marched on that day towards the frontiers. The next day the chiefs went to Buffalo creek to meet the grand council to be held there to decide on peace or war. The Deponent returned to Fort Franklin, called in all his parties and came home firmly impreſſed with a belief that there would be an Indian war with the ſix nations in a few days. The foregoing embraced all his tranſactions on this ſubject during 1794.

JOHN ADLUM.

Sworn 27 March, 1801.
in open Court.

EDWARD BURD, *Prothonatory.*

C. 5.

JOHN DENNISTON'S *Deposition.*

ON this thirteenth day of February, one thouſand ſeven hundred and ninety-ſix, before me, Robert Henry Dunkin, Eſquire, Notary Public, for the Commonwealth of Pennſylvania, duly commiſſioned and ſworn, reſiding in the city of Philadelphia, and, by law, authoriſed to adminiſter oaths and affirmations, came and appeared John Denniſton, of the county of Weſtmoreland, and being duly ſworn, on his ſolemn oath, depoſes, declares, and ſays, That he has heard numbers of people in the county of Weſtmoreland ſay, that, in their opinion, the time preſcribed by the Act of the Legiſlature of the State, paſſed on the third day of April, one thouſand ſeven hundred and ninety-two, for making ſettlements on lands ſituated north and weſt of the rivers Ohio and Alleghany, and Conewago creek, had expired. and they would go and take poſſeſſion of any tract or tracts of land, which they liked, without regard to any prior claim or title, derived from warrants or improvements; the date of which warrants and improvements were two years; and this deponent knows of one inſtance, and has heard, and verily believes of others having actually done ſo.

(Signed) JOHN DENNISTON,

Affirmed before me,
QUOD, *Atteſtor.*

(L. S.) (Signed) ROBERT HENRY DUNKIN.
Notary Public.

C. 6.

JOHN PARKER'S *Deposition.*

ON this fifteenth day of February, one thouſand ſeven hundred and ninety-ſix, before me Robert Henry Dunkin Eſquire, Notary Public for the Commonwealth of Pennſylvania, duly commiſſioned and ſworn, reſiding in the city of Philadelphia, and by law authorized to adminiſter oaths and and affirmations, perſonally came and appeared, John Parker aſſiſtant ſurveyor to John Moore, deputy ſurveyor of diſtrict No. 5, and being affirmed on his ſolemn affirmation,

SUMMA*r their Lands, West of Alleghany*

at Meadeville.

	A	E	F	G
	Purchase to James W	*nces in*	*Received for provisions & materials.*	*Received for advances in Cash.*
1793	$ 222		131 29	
1795	.....	.....	790 46	1132 11
1796	.....	1132 11	1253 67	2683 65
1797	.....	5183 65	1887 45	579 9
1798	.....	579 9	691 93	1030 92
1799	.....	1030 92		
876 Patents 1800	16	1570 52	281 92	
	9496 29		$ 5036 27	$ 5425 77
A	$ 238			
B	67			
C	55			
D	40			
E				
F				
G				

C. 5.

JOHN DENNISTON'S *Deposition.*

ON this thirteenth day of February, one thouſand ſeven hundred and ninety-ſix, before me, Robert Henry Dunkin, Eſquire, Notary Public, for the Commonwealth of Pennſylvania, duly commiſſioned and ſworn, reſiding in the city of Philadelphia, and, by law, authoriſed to adminiſter oaths and affirmations, came and appeared John Denniſton, of the county of Weſtmoreland, and being duly ſworn, on his ſolemn oath, depoſes, declares, and ſays, That he has heard numbers of people in the county of Weſtmoreland ſay, that, in their opinion, the time preſcribed by the Act of the Legiſlature of the State, paſſed on the third day of April, one thouſand ſeven hundred and ninety-two, for making ſettlements on lands ſituated north and weſt of the rivers Ohio and Alleghany, and Conewago creek, had expired. and they would go and take poſſeſſion of any tract or tracts of land, which they liked, without regard to any prior claim or title, derived from warrants or improvements; the date of which warrants and improvements were two years; and this deponent knows of one inſtance, and has heard, and verily believes of others having actually done ſo.

(Signed) JOHN DENNISTON.

Affirmed before me,
QUOD, *Atteſtor.*

(L. S.) (Signed) ROBERT HENRY DUNKIN.
Notary Public.

C. 6.

JOHN PARKER'S *Deposition.*

ON this fifteenth day of February, one thouſand ſeven hundred and ninety-ſix, before me Robert Henry Dunkin Eſquire, Notary Public for the Commonwealth of Pennſylvania, duly commiſſioned and ſworn, reſiding in the city of Philadelphia, and by law authorized to adminiſter oaths and and affirmations, perſonally came and appeared, John Parker aſſiſtant ſurveyor to John Moore, deputy ſurveyor of diſtrict No. 5, and being affirmed on his ſolemn affirmation,

C. 5.

SUMMARY of the Monies expended by the Holland Company for their Lands, West of Alleghany River.

Under the Administration of ROGER ALDEN, Esq. at Meadeville.

	A	B	C	D	E	F	G
	Purchase money to James Wilson,	*Provisions, utensils, materials & cattle.*	*Salaries & labour in building houses mills & other improvements.*	*Contracts for making settlements & quitting Claims.*	*Advances in Cash.*	*Received for provisions & materials.*	*Received for advances in Cash.*
1793	$ 222071 11					131 29	
1795		$ 1885 85	$ 3197 73			790 46	1132 11
1796		12103 12	6777 95	$ 2570 00	$ 1132 11	1253 67	2683 65
1797		15674 13	12802 60	31553 82	5183 65	1887 45	579 9
1798		16032 42	12593 44	2300 00	579 9	691 93	1030 92
1799		14415 2	11650 92	1697 00	1030 92	281 92	
876 Patent-1800	16360 18	7757 29	8047 64	2800 00	1570 52		
	A $ 238431 29	$ 67867 83	$ 55070 28	$ 40920 82	$ 9496 29	$ 5036 27	$ 5425 77
	B 67867 83						
	C 55070 28						
	D 40920 82						
	E 9496 29	$ 411786 51					
	F 5036 72						
	G 5425 77	$10462 49					
			$ 401324 02				

declares and ſays, that ſome time in the month of December laſt, an application was made to this affirmant in his official capacity by a perſon of the name of ———Laſty to know when the warrants that this affirmant had, would be two years old, and alſo where the beſt land lay in his diſtrict, for he was determined that he and his ſons would go and ſettle on the ſame as ſoon as the two years would expire; that there has been a conſiderable number of applications made to this affirmant by different people in Weſtmoreland county of a ſimilar nature, and that it is the general opinion of the people in that county, that as ſoon as the two years expired that they had that right;

(Signed) JOHN PARKER,

Affirmed before me,

QUOD; *Atteſtor.*

(L. S.) Signed, ROBERT HENRY DUNKIN.
Notary Public.

C. 7.

JAMES BUCHANAN'S *Depoſition.*

ON this eighteenth day of February, in the year of our Lord, one thouſand ſeven hundred and ninety-ſix, before me, Robert Henry Dunkin, Notary Public, for the Commonwealth of Pennſylvania, duly commiſſioned and ſworn; and by law authoriſed to adminiſter oaths and affirmations, perſonally came and appeared James Buchanan aſſiſtant ſurveyor to Stephen Gappan deputy-ſurveyor of diſtrict No. 8, and being duly ſworn on his ſolemn oath, depoſes, declares and ſays that an application was made to this deponent in his official capacity by Robert Dickey of Weſtmoreland to ſurvey a tract of land on the weſt ſide of the river Alleghany, in virtue of an improvement right which this deponent did, and gave to the ſaid Robert a draft of the ſame, that ſince that time the ſaid Robert has ſold the ſame tract to a certain Alexander Denniſon, and gave this deponent an order on Mr. Denniſon for his fees, (which Mr. Denniſon accepted) with the hand writing of the ſaid Robert Dickey, and has ſeen a petition with his name to, which this deponent underſtood was to be preſented to the Legiſlature for the purpoſe of making no alteration in the law relative to improvement rights, and which name is in the hand writing of the ſaid Robert, that the name of James Parry, alſo

to the ſame petition put, is the hand writing of James Parry of Weſtmoreland, who this deponent knows has bought and ſold improvement rights.

(Signed) JAMES BUCHANAN.

Sworn before me,

QUOD, *Atteſtor.*

(L. S.) Signed, ROBERT HENRY DUNKIN.
Notary Public.

D.

BALFOUR'S LESSEE, *vs.* MEADE. } *In the Circuit Court of the United States, in and for the Pennſylvania Diſtrict, in the ſaid Circuit.*

THIS was an ejectment for four tracts of land lying north and weſt of the Ohio and Alleghany rivers and Conewango creek in Pennſylvania. The Plantiffs title reſted upon ſettlement rights ſurveys and warrants. In 1793, the Plaintiff was a Surgeon in the army in garriſon at Fort Franklin. He took ſome of the ſoldiers, went out, cut down a few trees, and built up five pens or cabins about ten feet ſquare, and without putting covers on them returned back to the Fort in ſix or ſeven days. In April 1795, he had theſe five tracts ſurveyed in the name of himſelf, Elizabeth Balfour and three others, each four hundred acres. The Deputy Surveyor had upon application of the Plaintiff, directed one Wilſon to make the ſurveys, but ſomething preventing him from doing it, the Plantiff employed one Steel to do it; and upon returning the ſurveys to Stokely the Deputy Surveyor, he prevailed upon him to write an authority to Steel to make the ſurveys which Stokely ſays he did, and antedated in order to make it appear to precede the ſurveys: In May 1795, he obtained warrants of acceptance for two of the ſurveys for two of the tracts, having paid the conſideration money for all.

In autumn 1794, Meade the Defendant finding no perſon ſettled upon theſe tracts, built cabins upon the four tracts in controverſy, covered them or ſome of them, and then went off, not returning again until November 1795, when he came with his family to reſide in one of the cabins, and fixed ſettlers upon the other tracts. In July 1795, the Plaintiff gave notice to the Defendant that he

claimed the tracts in queſtion, that he intended to ſettle them, and forewarned him to proceed no further with his improvements thereon.

In January 1796, the Defendant caveated the Plaintiff in form, and the ſame being tried before the Board of Property in March 1800, the caveats were diſmiſſed and warrants were ordered to iſſue, but they never did iſſue in conſequence of doubts afterwards exiſting reſpecting the Plaintiffs title.

In April 1796, the Plaintiff made engagements with ſome perſons to ſettle theſe lands for him, but after they had ſeen and approved the lands they declined going on them on hearing of the defendant's claim.

It was in proof by many witneſſes that the war with the Indans rendered it dangerous to ſettle in that country during the years 1793, 1794, and 1795, and that but few attempted before the ſpring or autumn of 1796.

Mr. Dallas and Mr. Edward Tilghman contended that the Plaintiff had acquired a good right by ſettlement, ſurvey and warrant to the lands in queſtion under the laws of Pennſylvania, and particularly the act of the 3d of April 1792, 3d vol. p. 209, &c. and that the ſettlement of Meade in 1795, was in violation of the Plaintiffs prior right, and of courſe void that the Plaintiff had been prevented by the Indian hoſtilities from ſettling or fixing ſettlers until the peace of Fort Grenville:—made in August 1795, was ratified, viz. in December 1795, and that he had attempted it in a reaſonable time after that event cited—1 Dall. 6.—2 Dall. 98.—3 Dall. 457.—Addiſon 216. 354. 218.

Mr. Ingerſoll and Mr. M'Kean contended that the Plaintiff never had made a ſettlement within the meaning of the law, not having accompanied it with actual reſidence, or an intention to reſide, that of courſe he never had an inceptive title to be protected by the proviſo, in the 9th ſection of the act of the 3d April 1792, they cited Addiſon, 248. 335. The caſe of the Holland Company vs. Coxe, in the Supreme Court of this ſtate, and the deciſions of the judges of that court in a feigned iſſue tried at Sunbury.

The caſe was argued very much at length (beginning on Saturday and not ending before Tueſday at 2 o'clock, the court ſitting until 9 o'clock at night on Saturday and Monday) and with great abilities on both ſides.

WASHINGTON JUDGE:—The importance of this cauſe led the court to wink at ſome irregularities in the argument of it at the bar, which has tended to protract it to an unreaſonable length.—Depending on the conſtruction of laws of the ſtate, and particularly on that of the 3d of April 1792, it had at firſt the appearance of a difficult and very complicated caſe. It is not eaſy at the firſt reading of a long ſtatute to diſcover the bearings of one ſection upon another, ſo as to obtain a diſtinct view of the meaning and intention of the Legiſlature. But the opinion I now entertain was formed on Saturday before we parted, open however

as it always is to such alterations as ulterior reason and argument may produce.

The better to explain, and to understand the subject, it will be necessary, to take a general view of the different sections of the act of the 3d of April 1792, upon which this cause must turn. The first section reduces the price of all vacant land, not previously settled or improved within the limits of the Indian purchase made in 1768, and all precedent purchases to 5cs. for every 100 acres—that of the vacant lands within the Indian purchase made in 1784, lying east of Aleghany river and Conewango creek to £ 5. to be granted to purchasers in the manner authorised by former laws. The second section offers for sale all the other lands of the state, lying north and west of the Ohio, Alleghany and Conewango to persons who will *cultivate, improve and settle* the same or cause it to be done at the price of £7. 10*s.* per hundred acres, to be located, surveyed and secured as directed by this law—It is to be remarked, that all the above lands lie in different districts, and are offered at different prices.—Title to any of them may be acquired by *settlement*, and to all except those lying north and west of the Ohio, Alleghany and Conewango, by *warrant without* settlement.

The third section, referring to all the above lands authorises applications to the Secretary of the Land Office by any person having settled and improved, or who was desirous to settle and improve a plantation *to be particularly described;* for a warrant for any quantity of land, not exceeding 400 acres, which warrant is to authorise and require the Surveyor General to cause the same to be surveyed, *and to make return of it*, the grantee paying the purchase money and fees of office.—The eighth section which I notice in this place, because intimately connected with the 3d section, directs the Deputy Surveyor to survey and mark the lines of the tract upon the application of the *settler*. This survey, I conceive has no other validity than to furnish the *particular description* which must accompany the application at the Land Office for a warrant.

The fourth section amongst other regulations protects the title of an *actual settler*, against a warrant entered with the Deputy Surveyor posterior to such actual settlement.

The ninth section referring *exclusively* to the lands north and west of the Ohio, Alleghany and Conewango, declares "that no warrant or survey of lands within that district, shall give a title unless the grantee has, prior to the date of the warrant, made or caused to be made, or shall within two years after the date of it, make or cause to be made an actual settlement, by clearing, fencing and cultivating two acres at least in each hundred acres, erecting thereon a house for the habitation of man, and residing, or causing a family to reside thereon for five years *next* following his first settling the same, if he shall so long live, and in default of such actual settlement and residence other actual settlers may acquire title thereto."

Let us now conſider this caſe, as if the law had ſtopped here—A title to the land in controverſy lying north and weſt of the Ohio, Alleghany and Conewango, could be acquired in no other manner than by *actual ſettlement*—no ſum of money could entitle a perſon to a warrant, unleſs the application was preceded by actual ſettlement on the land, or if not ſo preceded by actual ſettlement the warrant would give no title unleſs it were followed by ſuch ſettlement within two years thereafter.

The queſtion then is, what conſtitutes ſuch an actual ſettler within the meaning and intention of this law, as will veſt in him an inceptive title ſo as to authoriſe the granting to him a warrant; not a pedis poſitio—not the erection of a cabin, the clearing or even the cultivation of a field. Theſe acts may deſerve the name of *improvements* but not *ſettlements*. There muſt be an occupancy accompanied with a *bona fide* intention to reſide and live upon the land, either in perſon or by that of his tenant—to make it the place of his habitation, not at ſome diſtant day, but at the time he is improving, for if this intention be only future, either as to his own perſonal reſidence or that of a tenant, then the execution of that intention by ſuch actual reſidence fixes the date; the commencement of the ſettlement, and the previous improvements will ſtand for nothing in the calculation.

The erection of a houſe, and the clearing and cultivating the ground, all or either of them may afford evidence of the quo animo with which it was done—of the intention to ſettle,—but neither or all will conſtitute a ſettlement, if unaccompanied by reſidence,—ſuppoſe then improvements made, the perſon making them declaring at the time, that they were intended for temporary purpoſes of convenience and not with a view to ſettle and reſide; could this be called an actual ſettlement within the meaning and intention of the Legiſlature? Surely no: But though ſuch acts againſt expreſs declarations of the quo animo, will not make a ſettlement, it does not follow that the converſe of the propoſition will—for a declaration of an intention to ſettle without actually carrying that intention into execution, will not conſtitute an actual ſettlement.

How do theſe principles apply to the caſe of the Plaintiff. In 1793, he leaves the Fort at which he was ſtationed, and in which he was an officer, with a few ſoldiers; cuts down ſome trees, erects four or five *pens* (for not being covered they do not deſerve the name of cabins) and in five ſix or ſeven days having accompliſhed this work, he returns into the Fort to his former place of reſidence. Why did he retreat ſo precipitately, we hear of no danger exiſting at the time of completing theſe labours which did not exiſt during the time he was engaged in them. What prevented him from proceeding to cover the cabins and from inhabiting them? Except the ſtate of general hoſtility which exiſted in that part of the country, there is no evidence of a particular neceſſity for flight in the inſtance of this plaintiff.—It is moſt obvious that the object of his viſit to this wilderneſs was to erect, what he conſidered to be improvements; but

they were in fact uninhabitable by a human being, and consequently could not have been intended for a present settlement. He was besides an officer in the army, and whilst in that service he could not settle and reside at his cabin, although the country had been in a state of perfect tranquility. In short, his whole conduct both at that time and afterwards —His own statements when asserting a title to the lands, the recitals in his warrants of acceptance, and certificates of survey, all afford proof which is irresistable, that he did not mean in 1793, to settle. Mistaking the law as it seems many others have done in this respect, he supposed that an improvement was equivalent to a settlement, for vesting a right to those lands —It is not pretended even now, nor is it proved by a single witness, not even by Crouse, who assisted in making the improvements, that he contemplated a settlement. It has been asked, could the Legislature have meant to require persons to sit down for a moment on land encompassed by dangers from a savage enemy?—I answer no:—at such a time it was very improbable that men would be found rash enough to make settlements.—But yet no title could be acquired without such a settlement, and if men were found hardy enough to brave the dangers of a savage wilderness, they might be called imprudent men, but they would also deserve the promised reward, not for their boldness, but for their settlement.

The first evidence we have of an intention in the Plaintiff to make an actual settlement was in the spring of 1796, long after the actual bona fide settlement of the Defendant with his family, for I give no credit to the notice from the Plaintiff to the Defendant in July 1795, since so far from accompanying it with actual settlement, he speaks of a future settlement which however was never carried into execution—Every thing which I have said with respect to the 400 acres surveyed in the name of George Balfour will apply a fortiori against the three other surveys in the name of Elizabeth Balfour, &c. who it is not pretended were ever privy even to the making of the cabins, or ever contemplated a settlement upon those lands.

If the law then had stopped at the proviso, it is clear that the Plaintiff never made such a settlement as would entitle him to a warrant. But he excuses himself from having made *such a settlement*, as the law required by urging the danger to which any person attempting a residence in that country, would have been exposed. He relies on the proviso to the ninth section of the law which declares "That if any such actual settler, *or* any grantee in any such original or succeeding warrant shall by force of arms of the enemies of the United States be prevented from making such actual settlement, or be driven therefrom, and shall persist in his endeavours to make such actual settlement as aforesaid, then in either case, he and his heirs shall be entitled to have, and to hold, the said lands in the same manner as if each actual settlement had been made and continued." Evidence has been given of the hostile state of that country, during the years 1793, 1794, 1795, and the danger to which settlers

would have been expoſed.—We know that the treaty at Fort Grenville was ſigned on the 3d of Auguſt 1795, and ratified the 22d of Dec. in the ſame year:—although Meade ſettled with his family in November 1795, it is not concluſive proof that there was no danger even then, and at any rate it would require ſome little time, and preparation for thoſe who had been driven off, to return to their ſettlements, and if the cauſe turned upon the queſtion whether the Plaintiff had perſevered in his exertions to return and make ſuch ſettlement, as the law requires, I ſhould leave that queſtion to the jury, upon the evidence they have heard.——But the Plaintiff, to entitle himſelf to the benefit of the proviſo, ſhould have had an incipient title at ſome time or other, and this could only have been created by actual ſettlement preceding the neceſſity which obliges him to ſeek the benefit of the proviſo:—or by warrant.

I do not mean to ſay that he muſt have had ſuch an actual ſettlement as this ſection requires, to give a perfect title, for if he had built a cabin, and commenced his improvement in ſuch manner, as to afford evidence of a bona fide intention, to reſide, and had been forced off by the enemy, at any ſtage of his labours, perſevering at all proper times afterwards, in endeavours to return, when he might ſafely do ſo, he would have been ſaved by the proviſo. But it is incumbent on the Plaintiff, if he would excuſe himſelf from the performance of what has been correctly called a condition precedent to bring himſelf fully and fairly within the proviſo which was made for his benefit:—this he has not done.

Deciſions in the Supreme Court and in the Common Pleas of this State have been cited at the Bar, two of which I ſhall notice for the purpoſe of pointing out the peculiar mark which diſtinguiſhes them from the preſent and to prevent any concluſions from being drawn from what has been ſaid either to countenance or impeach thoſe deciſions. The caſes I allude to are the Holland Company, *vs.* Coxe, and the feigned iſſue tried at Sunbury.

The incipient title under which the Plaintiffs claimed in thoſe cauſes were *warrants* authoriſed by the third ſection of the law. The incipient title in the preſent caſe is *ſettlement*. The former was to be completed by ſettlement ſurvey and patent. This to precede the warrant, and for the moſt diſtinct explanation of this diſtinction it will be important to aſcertain what acts will conſtitute an actual ſettler to whom a warrant may iſſue and what conſtitute an actual ſettlement as the foundation of a title. I have before explained who may be an actual ſettler to demand a warrant, namely one who has gone upon and occupied land with a bona fide intention of an actual preſent reſidence, altho' he ſhould have been compelled to abandon his ſettlement by the public enemies in the firſt ſtages of his ſettlement:—but actual ſettlement intended by the 9th ſection conſiſts in clearing fencing and cultivating two acres of ground at leaſt on each one hundred acres, erecting a houſe thereon, fit for the habitation of man and a reſidence continued for five years next following his firſt ſettling, if he ſhall ſo long live. This

kind of settlement more properly deserves the name of *improvements*, as the different acts to be performed clearly import. This will satisfactorily explain what at first appeared to be an absurdity in that part of the proviso which declares that "if such *actual settler* shall be prevented from making such *actual settlement*, &c." the plain meaning is, that if a person has once occupied land with an intention of residing though he has neither cleared or fenced any land and is forced off by the enemies of the United States before he could make the improvements and continue thereon for five years; having once had an incipient title, he shall be excused by the necessity which prevented his doing what the law required, and in the manner required:—or if the warrant holder who likewise has *an incipient title* although he never put his foot upon the land shall be prevented by the same cause from making these improvements, &c. he too shall be *excused* if as is required also of the settler he has persevered in his endeavours to make those improvements, &c.

But what it becomes such a grantee to do before he can claim a patent or even a good title, is quite another question upon which I give no opinion.

As to the Plaintiffs surveys and warrants they cannot give him a title. Not the surveys. 1st. Because they are a mere description of the land which the surveyor is authorised by the eighth section to make, and the applicant for the warrant is directed by the third section to lodge in the Land Office at the time he applies for the warrant. It is merely a demarcation, a special location of the land intended to be appropriated and gives notice of the bounds thereof, that others may be able to make adjoining locations without danger of interference this is not such a survey as is returnable so as to lay the foundation of a patent. 2d, It is not authorised by a warrant. 3d, It was not for an actual settler. 4th, It was not made by an authorised surveyor, if you believe upon the evidence that the authority to Steel, was antedated, and given after the survey was returned.—Not the warrant. 1st, Because it was not a warrant of title, but of acceptance. 2d, It is not founded on *settlement* but *improvement* and if it had recited the consideration to be actual settlement, the recital would have been false in fact, and could have produced no legal valid consequence.

As to the caveat; the effect of it was to close the doors of the land office against the further progress of the Plaintiff in perfecting his title. The dismission of it again opened the door, but still the question as to title is open for examination in ejectment, if brought within six months and the patent will issue to the successful party.

The Plaintiff therefore having failed to shew a title sufficient to enable him to recover in this action it is unnecessary to say any thing about the Defendants title and your verdict ought to be for the Defendant.

The jury found for the Defendant.

E.

Board of Property, *2d May* 1800.

PRESENT. { TENCH COXE, *Secretary Land Office,*
FRED. A. MUHLENBERG, *R. G.*
SAMUEL COCHRAN. *S. G.*

On the application of Mr. A. M'Dowell, in behalf of the Holland Company.

The Secretary of the land office, laid before the Board, three papers from James F. Randolph, James Birtch, and Daniel, and John Daniels, desiring their three several caveats against Paul Levi, and C. W. Peale, Mark Potter, and William and Joseph Fry, to be withdrawn, which the Board directed to be done.

Note, on enquiry it is found, that the usage is for the Secretary to admit the withdrawing of caveats upon proper grounds being to him presented.

Extract, TENCH COXE, Sec'ry.
Land Office.

To the Secretary of the Land Office, for the Commonwealth of Pennsylvania.

Whereas I have entered a caveat against issuing a patent for a tract of land surveyed in the name of Mark Potter, situated in Power's district in the county of Alleghany, near the waters of little Conneaut Lake, I do hereby request that the same may be withdrawn, having settled my claim with Roger Alden agent for the Holland Land Company, for whose benefit the same has been surveyed, and returned, as witness my hand and seal this 23d day of December, in the year 1799.

In presence of } JAMES BIRTCH.
HENRY ESCHER. }

I CERTIFY that the above and foregoing is an extract from the minutes of the Board of Property of Pennsylvania, and the act of James Birtch withdrawing his caveat, a true copy of the original on file in the Land Office of Pennsylvania. In testimony whereof, I have hereunto set my hand, and the seal of said office, at Lancaster the 26th day of August, A. D. 1800.

TENCH COXE,
(L. S.) *Secretary of the Land Office.*

F

An Authentic View of the Progress of the State of Pennsylvania, since the establishment of the Independence of the United States of America.

BY TENCH COXE.

IT was in the year 1781, that the Independence of the United States was completely *eſtabliſhed*, as well by numerous treaties with foreign powers, as by the operations of the field. It was then that a conviction of their ſtability as a ſovereign ſtate firſt decided the government of Great Britain to ſeek arrangements with America, as an independent country. It is from that epocha therefore, that we inſtitute our preſent exhibition.

From 1775 till 1781, the military ſervice, by land and ſea, had greatly exhauſted Pennſylvania. In many reſpects its reſources were reduced below their condition, under the deſcendants of *William Penn*. At that time (A. D. 1781.) we find the whole territory of this opulent and proſperous commonwealth remained (as it had been arranged before the ſeparation from England) in three old, and eight new counties: *eleven*, in all. To the original counties of Philadelphia, Bucks and Cheſter, eſtabliſhed by William Penn himſelf, a courſe of proſperity, improvement and population, had made it neceſſary to add the eight new counties of Northampton, on the Delaware; Berks, on the Schuylkill; and Lancaſter, on the Suſquehannah; Northumberland, on both ſides of that river; the counties of York and Cumberland, on the weſt ſide of the Suſquehannah; Bedford, approaching the great bends of the Potomac; and Weſtmoreland, on the Monongahela, Youghiogany, Ohio and Alleghany.

Thus we find that in the year 1781 there were only eleven counties in Pennſylvania, which occupied, as appears by the map, about three fifth parts of the ſurface of the State. The remainder, conſiſting of about eleven millions of acres, was then unpurchaſed of the Indians. It was afterwards brought at a fair and open treaty about the end of the laſt war.

Notwithſtanding the diſtreſſes always attendant on invaſive and revolutionary wars, the progreſs of ſettlement, improvement and population, was ſuch, that in the year 1781, a new county called *Waſhington*, was neceſſarily erected in the ſouth-weſtern angle of the State, to the ſouthward of the river *Ohio*, and weſtward of its *Monongahela* branch and of *Pittsburg*. It had, in 1793, about 5,045 taxable inhabitants, and 4,500 militia. A ſixth part of

Waſhington county has alſo been ſince cut off to form, with a part of old *Weſtmoreland*, a new county called *Alleghany*, at the head of the Ohio, chiefly weſt of Alleghany river, of which Pittſburgh, the moſt thriving inland town in America, is the ſeat of county juſtice. This county of Alleghany (ſometime after all the land of Pennſylvania was bought of the Indians in 1784) was extended to lake Erie, to the weſtern line of the State, and to the line of New-York. It has now in it above 5,000 taxable inhabitants, and about 22,000 ſouls. It includes the town of *Erie* at Preſqu'iſle, the town of *Waterford* at Le Boeuf, the town of *Meadeville* on the ſouth ſide of French creek, at Caſſewago creek, and the town of *Franklin* and fort *Franklin* at the confluence of *French* creek and *Alleghany* river. Out of the ſame flouriſhing county of Waſhington has alſo been erected, within two years, the county of *Greene*, which joins to Virginia, on the ſouth and weſt, to the *Monongahela* river on the eaſt, and old *Waſhington* county on the north. It is watered by Ten Mile creek, Ruff and Whiteley creeks, Dunkards and Fiſh creek, and ſome of the ſtreams of *Wheeling* creek. It will be underſtood then, that the whole weſtern boundary of Pennſylvania is now occupied in the ſouth part by *Greene* county, in the north part by *Alleghany* county, and in the middle by the remainder of the original county of *Waſhington*.—Theſe three counties contain now the wonderful population of 50,000 perſons: and as the new countries of America have at firſt an unnatural proportion of adult and middle-aged males, the militia of that powerful frontier cannot be leſs than 11 or 12,000 hardy men.—This frontier is defended by Lake Erie, on which is a flouriſhing town called *Erie*, with fortifications and cannon, and a force upon the water. It is ſituated on the baſon formed in the lake, by the peninſula or *Presqu'iſle*. There is alſo in the ſouthern part of the county a fort called *M'Intoſh*, at the confluence of the *Ohio* river and Big *Beaver* creek. At Pittſburg there is alſo a reſpectable Fort, mounting cannon, and there are gallies upon the rivers there. At *Franklin* and *Le Bœuf* or *Waterford*, there are alſo Forts. The new ſettlements on the lands of Congreſs, weſt and ſouth-weſt of Pennſylvania, and the north-weſtern counties of Virginia, (namely Ohio county, &c.) add to the ſtrength of this frontier: and the counties of Somerſet, Fayette and Weſtmoreland, which join them in Pennſylvania, and have 8,000 militia, make up, altogether, a force able to repel the whole of the Indian tribes that now remain. But *the juſtice* of Congreſs has ſubdued the ſpirit of the Savages, and Indian wars will occur there no more.

In 1770 the weſtern country of Pennſylvania was compoſed of Cumberland, Bedford and Weſtmoreland, and contained only 1501 *taxable* inhabitants. Ten years after, that is to ſay, in A. D. 1780, the ſame tract of country had more than doubled its taxable inhabitants, which were found to be 3521; and in twenty-three years more, *i. e.* A. D. 1793, thoſe three counties were found to have ſix-

teen times the taxables of A. D. 1760, and ſeven times the taxable inhabitants of 1770, viz. 24,785 taxable perſons. From Cumberland, Bedford and Weſtmoreland, there had, by that time, been made the five new counties of Waſhington, Alleghany, Huntingdon, Fayette and Mifflin. Somerſet and Greene have ſince been erected out of the ſame tract of country, and the next ſeſſion of the Legiſlature will give birth to one or two more, to accommodate the encreaſing ſettlers. Nearly all theſe counties are weſt of the Alleghany mountain.

The county of Alleghany, under the auſpices of the *Population* Company and the *Holland* Company, and of many active private perſons, has encreaſed in improvements, mills, roads, ſettlements, and value, more rapidly than any part of Pennſylvania, or indeed of the United States. It is computed, on good ground, that there have been expended by the State, by various aſſociated native and foreign companies, and by individuals, in money, labour, proviſions for workmen, ſaw-mills, griſt-mills, houſes, clearings of land, roads, &c. about one million of dollars within the laſt five years; and a population of about 2,500 families upon 2,500 farms has been eſtabliſhed, beſides the five towns at Fort M'Intoſh, Fort Franklin, Meadeville, Waterford and Erie. The improvements upon every tract have added treble to the value of the ſettler's lot itſelf, and greatly raiſed the worth of the adjoining and interval lands.

Beſides this effect upon the ſettled lands themſelves, and thoſe adjoining and adjacent, theſe great improvements in Alleghany county, and the progreſs of Greene, Waſhington, Weſtmoreland, Somerſet and Huntingdon, have had very great immediate effects upon all that very fine body of lands which lies eaſt of Alleghany river, and weſt of the Allghany mountains, in Lycoming, Somerſet, Huntingdon, and the northern parts of Weſtmoreland. So very ſtrong and populous a frontier as that formed by Greene, Waſhington and Alleghany, renders all the country of Pennſylvania, eaſt of Alleghany river, ſo *perfectly* ſafe, and free from all *poſſible* injury or interruption by the Indians, that it is peculiarly well calculated for ſettlement by the peaceable religious ſocieties, ſuch as *the Friends* or Quakers, *the Moravians* or United Brethren, *the Menoniſts* or German Baptiſts, and *the Dunkards*. It is certain too, that roads will be immediately forced through Lycoming, &c. to join the old ſettled counties of Northumberland, &c. to the great new ſettlements on Lake Erie, and on the weſt ſide of Alleghany river. Accordingly we find the Legiſlature have granted money to make a road from *Bald Eagle* in Mifflin county, acroſs the Muſhannon by *Philipſburg* on that ſtream; thence acroſs the weſt branch of the Suſquehannah; thence by Sandy Lick *Salt Spring* to Toby's creek and Alleghany river. They have alſo granted money for a road from Frankſtown through the *Cambrian* or *Welſh* ſettlement, and town of *Beula*, which is under

the direction of a Clergyman from Wales, Mr. *Morgan J. Rhees.** Other grants have been made by the General Aſſembly of Pennſylvania with their uſual liberality, and will be repeated, if neceſſary, for new ſettlements.

In the ſame year 1781, the old county of Northumberland occupied nearly as much of the *north* ſide of Pennſylvania, as had been then purchaſed from the Indians. The title of the natives having been bought of them, the county of Luzerne on both ſides of the N. E. branches of Suſquehannah, and the county of Lycoming on both ſides of the W. branch of Suſquehannah, have been erected to accommodate the actual ſettlers. In Lycoming a county ſeat of juſtice has been eſtabliſhed at the diſtance of 40 miles beyond the town of *Sunbury*, which remains the capital of Northumberland county.—The town of Northumberland, oppoſite to Sunbury, is alſo advancing, and has been choſen for the reſidence of Dr. *Prieſtly*, and the Site of a public academy. The ſettlements on the W. branch of Suſquehannah, in *Lycoming* county, have been extended up that very fine ſtream to the mouth of *Anderſon's* creek, a water of the former, and to *Chinclecamoutch*. The navigation of thoſe waters, and of *Sinnemahoning* have been explored, and goods have been carried to the head of that creek, thence by a road of 23 miles to the head-waters of *Alleghany*, down which they have been boated to Fort Franklin.

In like manner out of the northern parts of the county of Northampton on Delaware, has been erected, within the two laſt years, the new county of *Wayne*, which occupies the north-eaſtern angle of the State, joins New York on the eaſt and north, and lies upon the weſt bank of Delaware, and on the waters of Lehiwaxen, Starrucca, Connewacta, Equinunk and Shohockin. It is well interſected with roads for a new country. The moſt forward ſettlements of that country are principally on and near the Lehiwaxen and Delaware.—Theſe lands and thoſe of Luzerne are entirely free from any poſſibility of interruption by the Indians, being above 300 miles diſtant from any of the Indian hunting grounds. In fact, all Pennſylvania is free from any hazard or inconvenience of that nature, ſince the vigorous eſtabliſhment of the three counties of Alleghany, Waſhington and Greene. The country in the ſtate of New-York, along the north lines of Wayne and Luzerne county, and a part of Lycoming, which

* This Settlement merits particular obſervation and conſideration. It was commenced in October 1796, in the latitude of 40 degrees and 27 minutes. An early ſnow fell there in November. But the reſolute and hardy Welſhmen who compoſe the body of ſettlers) went formly on through the winter ſeaſon—They had more difficulty in regard to the ſeaſon, and the high price of proviſions then current, than can well occur together again, in any new ſettlement: yet they have above fifty houſes, and mills erected, and more than 250 ſettlers. A good Library, a little Society of Agriculture and Arts, and the commencement of a Seminary for the Education of Youth in their growing ſettlement, add to the utility of their eſtabliſhment.

alſo bounds on New-York, is pretty well ſettled: in ſome parts thickly. The counties of Wayne, Luzerne and Lycoming, are preferable in point of climate to the lands of New York, and the Geneſee country, being further ſouth. It is therefore, leſs expenſive of forage to winter cattle. The navigation of Delaware, Lehiwaxen and Suſquehannah, are important to Wayne county, and that of Suſquahannah is important to Luzerne. It is in Luzerne that a number of French families have made ſome handſome and expenſive ſettlements, which were called *Aſylum*, and are now the property of *the Aſylum Company*.

From the former county of Cumberland there have been erected, ſince the ſame date, (1781) the new counties of Mifflin and Huntingdon, on the Juniata river, a branch of Suſquehannah. Fayette county has been erected out of Weſtmoreland, between the ſouthern heads of Ohio; Somerſet out of Bedford, near Potowmack; Franklin, near the ſame river, out of York. In ſhort, though Pennſylvania, nearly 100 years from its beginning, had, in 1781, but eleven counties, all which were then erected above ten years, it has been ſince ſo proſperous in wealth, population and improvement, that fourteen new counties have been added in the ſhort ſpace of eighteen years. Theſe are in every quarter of its territory, from the banks of the Delaware to the Ohio, Alleghany and lake Erie, and from the line of New York on the north to that which ſeparates us from the ſtates of Delaware, Maryland and Virginia, on the ſouth. This is a ſtrong evidence of the progreſs of Pennſylvania, exhibited by its public records: *a certain evidence.*

The ſeat of the government of this State has been recently removed from Philadelphia to Lancaſter, the greateſt inland town in the United States, ſituated in a very rich, improved, and populous country. It will, before a long time, be permanently fixed at Columbia, Harriſburgh, or ſome other place on the river Suſquehannah, which will not at all diminiſh the trade of Philadelphia, while it will greatly promote the internal improvement of the State. Two flouriſhing villages have been eſtabliſhed on the left bank of the Juniata, at Lewiſtown and Huntingdon, as the ſeats of juſtice for the two new counties of Mifflin and Huntingdon. Columbia has ariſen on the eaſt bank of Suſquehanna within a few years. Villages are riſing in many places.

It was computed that the exports of Philadelphia to all the other ſtates, and to all foreign and Britiſh countries, did not exceed, in the times of the province, two millions of dollars, nor at any time before 1781. In the war, indeed, they were reduced much below that ſum. But they have been in our beſt year ſince, *Seventeen millions and a half*, of dollars, and have been on an average of three years about ſeven times as much to *foreign* countries *only* as they formerly were to foreign, Britiſh and American. The imports are much more conſiderable, which in any other time, and in any other

country would appear to be much againſt its proſperity. But at preſent, ſo much property is thrown into our country by ſubſtantial and prudent foreigners from the diſorders in Europe, that our great importations do not hurt us. We apply *to improve our country*, to build *Houſes*, *Mills*, *Ships* &c. with many of the articles of importation. They are not eaten, drank, worn out, or diſſipated in luxury, but they go to make buildings to rent, to manufacture iron, flour, paper, oil, &c. and in ſhort they enter into our permanent and productive *capital ſtock*, and are not conſumed in our annual expences and charges. This application of imported goods is *peculiar* to a new, improveable, and progreſſing country, and to a very increaſing people, as we are. It is plain, that this is the true ſtate of the matter, for though we import much more than our great exports, yet the exchange with all the world is conſtantly in our favour.

Since the year 1781 alſo, the Banks of North America, the United States, and Pennſylvania, and the Inſurance companies of North-America and Pennſylvania have been eſtabliſhed in Philadelphia. Before that time we had no Banks nor had we any Inſurance Companies. We have alſo conſtructed an excellent Turnpike road from the Delaware, nearly to the Suſquehannah.

The ſtate of Pennſylvania has ſold to private perſons *all* her new lands. No more will remain to be ſold by the ſtate after all the orders for lands ſold by its Government ſhall be diſcharged by titles for that kind of property to their amount. This is greatly in favor of thoſe, who have purchaſed lands, or ſhall purchaſe them at the preſent moderate rates.

The proſperity of the town of Baltimore has been greater than that of any *ſeaport* town of the United States, judging by its *exports*. This is a direct proof of the proſperity of Pennſylvania, for *many* of our richeſt and moſt productive counties lie nearer to Baltimore than to Philadelphia. The iron-maſters, the millers and others, are therefore conſtantly induced to ſend their produce thither, to ſave part of the charges of tranſportation. As a proof of this there is actually, a very great competition of the two cities to attract the internal trade of Pennſylvania by canals and turnpike roads—a competition highly beneficial to the land holders of Pennſylvania. The ſame may be ſaid in regard to our Potowmac counties and Alexandria, and the Federal City of Waſhington.

Though it is very certain that this ſtate ought not to attempt, yet, the manufacture of ſilks, fine linens, laces, and ſuch fabrics; yet it is equally true that mills, ſhops, and works to make fiſh-oil, flax-ſeed oil, paper and paſteboard, nail-rods, hollow iron-ware, ſheet-iron and copper, flour and meal, leather, wool, hats, bulky furniture and carriages, grain ſpirits, fruit ſpirits, cane ſpirits, beer, ale and porter, refined ſugar, candles, ſoap, gunpowder, cannon, ſhells and balls, board gun-barrels, glaſs and earthen ware,

mill-ſtones, grindſtones, whetſtones, ſhips boats, cordage, and other bulky and brittle things, have been eſtabliſhed, continued, and extended in Pennſylvania with profit to the makers, and clear and great benefit to the land-holder. Every operation or manufacture that conſumes the produce of this country, is profitable to the land-holders; and every thing that is *bulky*, and many things that are eaſily broken in the carriage, can be made with profit in Pennſylvania. Take the example of an iron-furnace, a glaſs-houſe, or an earthen-ware manufactory. If lands that will yield thirty buſhels of wheat per acre, when cleared, were to be bought at twelve ſhillings ſterling, in Alleghany or Lycoming, the trees taken off them, would carry on the iron-works without any expence for fuel; becauſe the lands when cleared, would be worth much more than before. It is alſo certain that lands of the pooreſt quality, if covered with wood, for manufacturers fuel, building, &c. may be purchaſed ſo as to yield an inexhauſtible ſtock to make iron, earthen ware, glaſs, bark for tanning, burning lime-ſtone, making boards, and other uſeful and neceſſary things. Such lands however poor, if bought low enough, are a profitable "*Deferred Stock*" for capitaliſts; though good lands are much preferable as long as they can be got at moderate prices. It is known, that there is no cleared farm land in Europe, however rich, that is worth near ſo much per acre as the wood and timber growing upon an adjoining acre of uncleared land. It is certainly ſo even in many parts of New-England, New-Jerſey, Delaware, the old counties of Maryland, &c. The office of the *Penn* family was cloſed in Pennſylvania in 1776. At that time the coſt and charges of taking up lands, and procuring a knowledge of their ſituation, was nearly as high as many good lands can at this time be bought for in ready money. The population of the State was then ſcarcely 230,000 perſons, and is now probably 600,000, having been 434,000 in 1790, by the cenſus, though the army and navy had taken off ſo many adult men from 1776 to 1783. New-England, New-Jerſey, the Eaſtern ſhore of Maryland, and indeed all Maryland and Delaware ſtates, are now full; and the people of all Europe, inſtead of thoſe of Great Britain alone, are received to purchaſe lands, and purſue trades and buſineſs. The climate of the northern half of Pennſylvania, which is the moſt unſettled, and of courſe yet the cheapeſt, is that in which the winter falling weather is generally *ſnow*, and not rain, as in Maryland. This is highly favourable to a certainty of crops; for *ſnow* is the proper and natural covering for the boſom of the earth, from the inclemencies, and changes of winter.

There can be no doubt, but that prudent purchaſes of lands in Pennſylvania, and elſewhere in America, have, for 150 years paſt, been very profitable, and it is equally clear that America was then ſtruggling with many difficulties, from which ſhe is now quite free. It is alſo clear that we have derived great advantages from the free-

dom of our commerce and of our arts and trades, from banks and inſurance companies, and many other things auxiliary to the public operations and proſperity; that there are no more *public* lands in this ſtate to ſell; that private perſons will at this time ſell upon moderate terms, which can by no means be expected to continue very long; that our population is now very great, and very increaſing; our annual improvements very conſiderable, the dangers and expences of Indian wars entirely at an end; that the country is no longer a rude, wild, and infantine object without attractions to men of reading, information, ſcience, and taſte, but affords to perſons of leiſure, property, and talents, a large ſhare of the enjoyments of poliſhed life, while it yields to the leſs wealthy, and to the poor, generous opportunities of real comfort and ſpeedy advancement in property and buſineſs. The ſtate contains a large fund of uſeful knowledge, ſkilful and willing induſtry, and money to promote its future proſperity, and it has formed invaluable connections in commerce, trades, lands, and funds with our ſiſter ſtates, and with the moſt reſpectable nations in Europe, and their colonies. If then the foreigner or the American has heretofore found great and certain profit in the purchaſe, permanent tenure, improvement, and ſales of lands in Pennſylvania, in its more infant ſtate, it cannot be doubted that it will afford ſuperior advantages to thoſe, who purchaſe with care, prudence and judgment in future.

G

At a Special Meeting of the Board of Property, 16th Dec. 1797.

PRESENT. { DANIEL BROADHEAD, S. G. / JOHN HALL, Secr'y. / FRANCIS JOHNSTON, R. G. } of the Land Office.

RESOLVED, That the following be the form of the certificate to be produced to the Secretary of the Land Office, before any patents ſhall iſſue for land lying north and weſt of the rivers Ohio and Alleghany and Conewango creek, and that the ſame be ſigned by the proper Deputy Surveyor of the diſtrict where the land lies, and by the Diſtrict Judge; or two juſtices of the peace in the vicinity of the ſaid land, and that the Secretary cauſe the ſaid form with this reſolution to be publiſhed in the Pittſburgh Gazette.

We do hereby certify that hath made or cauſed to be made an actual ſettlement on a tract of land containing acres, lying north and weſt of the rivers Ohio, and Alleghany and Conewango creek, ſituate, &c. (here deſcribe the land) by clearing

fencing, and cultivating, at leaſt two acres for every hundred acres, contained in the ſurvey of ſaid tract—that he hath erected thereon a meſſuage for the habitation of man, and reſided, or cauſed a family to reſide thereon, for the ſpace of five years next following his firſt ſettling of the ſame.

(A true copy)

JOHN HALL,
Secr'y of the Land Office.

H.

December 21ſt, 1797.

THE Board, deſirous of eſtabliſhing a legal form of a Certificate to be produced to the Secretary of the Land-office before patents ſhall iſſue for lands lying north and weſt of the rivers Ohio and Alleghany and Conewango creek, wrote to Jared Ingerſoll, Eſquire Attorney-General, for his opinion and directions on this ſubject, to which they received the following reply, viz.

" Gentlemen,

" The Certificate propoſed by you, reſpecting the lands lying " north and weſt of the rivers Ohio and Alleghany and Cone- " wango creek appears to me to be unexceptionable in its form, " provided you add a Clauſe conformable to the Proviſo contained " in the ninth ſection, that where the ſettler or grantee has been " prevented making ſuch ſettlement, or hath been driven therefrom " by force of arms of the enemies of the United States, and " has perſiſted in his endeavours to make ſuch ſettlement, he " is entitled as if ſuch ſettlement had actually been made and " continued."

Whereupon, the Board made the following Reſolution, adopting the annexed form of Certificates, viz.

Reſolved, That the following be the form of the Certificate or Certificates, to be produced to the Secretary of the Land-office before any patent or patents ſhall iſſue for lands lying north and weſt of the rivers Ohio and Alleghany and Conewango creek and that the ſame be ſigned by the proper Deputy-Surveyor of the diſtrict where the land lies, and by the diſtrict Judge, or two Juſtices of the Peace, in the vicinity of the ſaid land; and that the Secretary cauſe the ſame form, with this reſolution, to be publiſhed in the Pittſburgh Gazette:

" We do hereby certify, ſatisfactory proof having being made to us, That hath made, or cauſed to be made, an actual ſettlement on a tract of land, containing acres, lying north and weſt of the rivers Ohio and Alleghany and Cone-

wango creek, ſituate &c. (here deſcribe the land) by clearing, fencing and cultivating, at leaſt two acres for every hundred acres contained in the ſurvey of the ſaid tract: that he hath erected, or cauſed to be erected, a meſſuage for the habitation of man, and reſided, or cauſed a family to reſide thereon, for the ſpace of five years next following his firſt ſettling the ſame."

Or,

"We do hereby certify, That the grantee or ſettler, hath been prevented from making a ſettlement on a tract of land, containing ſituate, &c. conformable to the Proviſo, contained in the ninth ſection of the Act, entitled "An Act for the ſale of vacant lands within this Commonwealth," paſſed the third day of April, 1792, by force of arms of the enemies of the United States; and that he, the ſaid , hath perſiſted in his endeavours to make ſuch ſettlement."

I CERTIFY, That the above, and foregoing, is a true copy of a Minute of the Board of Property of Pennſylvania, entered in Minute of Property Book, No. 5, pages 259 and 260, remaining in the Office of the Secretary of the Land-office of Pennſylvania. In teſtimony whereof, I have hereunto ſet my hand and ſeal of the Land-office aforeſaid, at Lancaſter, this 14th day of February, 1803.

(L. S.) ANDREW ELLICOTT, Sec.
Land office.

The Form of Patent adopted in Caſe of Prevention, and iſſued to the Company.

THE COMMONWEALTH OF PENNSYLVANIA.

To all to whom theſe Preſents ſhall come, Greeting:

(L. S.) THO. MIFFLIN.

KNOW YE, That in conſideration of the monies paid by John Melbeck, into the Receiver-General's Office of this Commonwealth, at the granting of the Warrant herein after mentioned, and of the ſum of three pounds eight ſhillings and ninepence, lawful money, now paid by Wilhem Willink, Nicolaas Van Staphorſt, Pieter Stadnitſki Chriſtiaan Van Eeghen, Hendrick Vollenhoven, and Rutgert Jan Schimmelpenninck, into the ſaid Office; and alſo in conſideration of the ſaid Wilhem Willink, Nicolaas Van Staphorſt, Pieter Stadnitſki, Chriſtiaan Van Eeghen, Hendrick Vollenhoven, and Rutgert Jan Schimmelpenninck, having made it appear to the Board of Property, that they

were, by force of arms of the enemies of the United States, prevented from making ſuch ſettlement on the herein after deſcribed tract of land, as is required by the ninth ſection of an Act of the General Aſſembly of this Commonwealth, paſſed the third day of April, 1792, entitled "An Act for the ſale of vacant lands within this Commonwealth," within the time therein mentioned, and that they the ſaid Wilhem Willink, Nicolaas Van Staphorſt, Pieter Stadnitſki, Chriſtiaan Van Eeghen, Hendrick Vollenhoven, and Rutgert Jan Schimmelpenninck, have perſiſted in their endeavours to make ſuch ſettlement, there is granted by the ſaid Commonwealth unto the ſaid Wilhem Willink, Nicolaas Van Staphorſt, Pieter Stadnitſki, Chriſtiaan Van Eeghen, Hendrick Vollenhoven, and Rutgert Jan Schimmelpenninck, of the city of Amſterdam, a certain tract of land called Normandy, ſituate in diſtrict No. 2, north and weſt of the rivers Ohio and Alleghany, in Alleghany county, beginning at an Ironwood; thence by land of Charles W. Peale, ſouth three hundred and twenty perches, to a red oak; thence by land of Michael Canner, weſt, two hundred and thirteen perches, to an oak; thence by land of William Cameron and land of Peter Baynton, north, three hundred and twenty perches, to a white oak; and thence by land of Iſaac Paxton, eaſt, two hundred and thirteen perches, to the beginning, containing four hundred and one acres one hundred and fifty perches, and the allowance of ſix per cent. for roads, &c. [which ſaid tract was ſurveyed in purſuance of a Warrant, dated the eighteenth day of April, 1792, granted to the ſaid John Melbeck, who by deed, dated the fifth day of January, 1797, conveyed the ſaid tract to the ſaid Wilhem Willink, Nicolaas Van Staphorſt, Pieter Stadnitſki, Chriſtiaan Van Eeghen, Hendrick Vollenhoven, and Rutgert Jan Schimmelpenninck,] with the appurtenances. To have to hold the ſaid tract or parcel of land, with the appurtenances, unto the ſaid Wilhem Willink, Nicolaas Van Staphorſt, Pieter Stadnitſki, Chriſtiaan Van Eeghen, Hendrick Vollenhoven, and Rutgert Jan Schimmelpenninck, their heirs and aſſigns, to the uſe of the ſaid Wilhem Willink, Nicolaas Van Staphorſt, Pieter Stadnitſki, Chriſtiaan Van Eeghen, Hendrick Vollenhoven, and Rutgert Jan Schimmelpenninck, their heirs and aſſigns forever, free and clear of all reſtrictions and reſervations as to Mines, Royalties, Quit-rents, or otherwiſe, excepting and reſerving only the fifth part of all Gold and Silver Ore, for the uſe of this Commonwealth, to be delivered at the pitt's mouth, clear of all charges. IN WITNESS whereof, THOMAS MIFFLIN, Governor of the ſaid Commonwealth, hath hereto ſet his Hand, and cauſed the State Seal to be hereunto affixed, the ſeventh day of October, in the year of our Lord one thouſand ſeven hundred and ninety-nine, and of the Commonwealth the twenty-fourth.

Atteſt,

JAMES TRIMBLE, Dep. Sec'ry.

N. O.

Extract from the Journals of the Senate,

TUESDAY, Feb. 9, 1802. Page 157.

MR. FINDLEY, from the Committee to whom was referred on the 21ſt of January laſt, the Petition of the Subſcribers thereto, made Report; and the ſame was read as follows, *to wit:*

The Committee, to whom was referred, on the 21ſt of January laſt, the Petition reſpecting Lands weſt of the Ohio and Alleghany rivers. and of Conewango creek, report,

That, having examined the ſaid Petition, they obſerve, that it ſets forth the following particulars, as matter of Complaint, viz. That though the Law paſſed the 3d day of April, 1792, granting Lands in that part of the State, was intended and calculated for the encouragement and accommodation of actual Settlers only; that, nevertheleſs, the intention of the Legiſlature, expreſſed in the ſaid Law has hitherto been, in a great meaſure, perverted, by large Companies of Land-ſpeculators, &c. having engroſſed much of the ſaid Land, which they continue to hold under Warrants, without fulfilling the conditions of actual Settlement, &c. enjoined by the Law; and that, in many inſtances, the ſaid Warrant-holders have obtained Patents from the State, on Certificates that they have been prevented from making the Settlement and Improvement, which the Law requires; which Certificates, the Petitioners alledge, are not only in terms contrary to Law, but fraudulently obtained: And the Petitioners conclude by praying, that the ſubject matter of their Complaint may undergo a Legiſlative Deciſion.

The Committee have likewiſe examined the Law, under which the ſubjects of Complaint are alledged to have taken place; and they obſerve, that it is expreſsly declared, in the ninth Section thereof, that no Warrant to be iſſued, nor Survey to be made, ſhall veſt any Title in or to the Lands therein mentioned, unleſs the Grantee has, prior to the date of ſuch Warrant, made, or cauſed to be made, an actual Settlement thereon; or, within the ſpace of two years, next after the date of the ſame, make, or cauſe to be made, an actual Settlement thereon.

This Declaration, however, is followed by a proviſion in favor of thoſe who ſhall, by force of the arms of the Enemies of the United States, be prevented from making ſuch actual Settlement, or be driven therefrom; On condition, however, that they perſiſt in their endeavour to make ſuch actual Settlement.

The Committee are of opinion, that the Act of the 3d of April, 1792, being in the nature of a Contract with the actual Settler; he having performed the Condition precedent; which, agreeably to that Law, must take place before any legal Title can vest; the adverse Claim between the Holders of Warrants and actual Settlers, depending on substantial matters of Fact, must and ought to be left to a Court and Jury of the Vicinage.

The distribution of the Legislative, Executive, and Judicial Powers of Government, into separate and distinct Departments, being a fundamental Principle in Republican Governments, and essential to the preservation of Liberty, and protection of Property, and explicitly recognized in both the Federal and State Constitutions; which the Members of this House are expressly sworn to support; the Legislature cannot invade the Province of the Judiciary, without a perversion of those Constitutions, and a violation of their solemn Oaths.

To make Legislative Grants, and Rules of Conduct for the Citizens and the Executive and Judicial Departments of Government, is the Province of the Legislature. A Law, for a rule of Conduct, may be altered or repealed; but a Grant, for a valuable Consideration, cannot be revoked by a Legislative Act; nor a Contract impaired, if the Conditions are performed; not only because the doing so is inconsistent with the Principles of all free Governments; but because the Constitution of this State declares, that no *expost facto* Law, nor any Law impairing Contracts, shall be made: And the Federal Constitution also expressly forbids *expost facto* Laws to be enacted.

From a view of the state of Facts set forth in the Petition, compared with the Principles herein expressed, the Committee offer the following Resolution:

Resolved, That the matters set forth in the Petition, being such as are only proper subjects for the Decision of a Court and Jury of the Vicinage, the Prayer thereof ought not now to be granted by the Legislature.

P.

AN ACT *to settle the Controversies arising from contending Claims to Lands within that Part of the Territory of this Commonwealth North and West of the Rivers Ohio and Alleghany and Conewango Creek.* Vol. 5. page 153.

WHEREAS by the ninth section of an Act of General Assembly, passed the 3d day of April, 1792, entitled "An Act for the

ſale of the vacant lands within this Commonwealth," it is enacted, that "no warrant or ſurvey to be iſſued or made in purſuance of the ſaid Act for lands lying north and weſt of the rivers Ohio and Alleghany and Conewango creek, ſhall veſt any title in or to the lands therein mentioned, unleſs the grantee has, prior to the date of ſuch warrant, made, or cauſed to be made, or ſhall within the ſpace of two years next after the date of the ſame, make, or cauſe to be made, an actual ſettlement thereon, by clearing, fencing, and cultivating, at leaſt two acres for every hundred acres contained in one ſurvey, erecting thereon a meſſuage for the habitation of man, and reſiding, or cauſing a family to reſide thereon, for the ſpace of five years next following his firſt ſettlement of the ſame, if he or ſhe ſhall ſo long live; and in default of ſuch actual ſettling and reſidence, it ſhall and may be lawful to and for this Commonwealth to iſſue new warrants to other actual ſettlers for the ſaid lands or any part thereof, reciting the original warrants, and that actual ſettlements and reſidence have not been made in purſuance thereof; and ſo, as often as defaults ſhall be made, for the time and in the manner aforeſaid; which new grants ſhall be under and ſubject to all and every the regulations contained in this Act: *Provided*, That if any ſuch actual ſettler, or any grantee, in any ſuch original or ſucceeding warrant, ſhall by force of arms of the enemies of the United States be prevented from making ſuch actual ſettlement, or be driven therefrom, and ſhall perſiſt in his endeavours to make ſuch actual ſettlement as aforeſaid, then, in either caſe, he and his heirs ſhall be entitled to have and hold the ſaid lands, in the ſame manner as if the actual ſettlement had been made and continued:" AND whereas applications have been made and are making to the Land-office for new warrants, in caſes where the applicants are of opinion that the original warrantees are barred from claiming title by their own default, in not complying with the conditions required in the ſection above recited; and although it appears, from the Act aforeſaid, the Commonwealth regarded a full compliance with thoſe conditions of ſettlement, improvement and reſidence, as an indiſpenſible part of the purchaſe or conſideration of the lands ſo granted; yet, as much confuſion might ariſe, if the State were to continue to grant lands, which, in conſequence of former Acts, may have become the property of others: AND whereas it appears, on the one hand, by the Repreſentations of the Agents of certain Companies, called the "Holland Company & the Population Company" to the Legiſlature of this Commonwealth, that they complain of certain lawleſs men having intruded on the lands within the claims of the ſaid Companies, which claim appears to extend over the greater part of the territory of this Commonwealth, ſituate north and weſt of the rivers Ohio and Alleghany and Conewango creek praying for the interpoſition of the Legiſlature, and ſtating, That the claims of the ſaid Companies ariſe from warrants and patents duly applied for, and fairly iſſued and granted by the Officers of the Land-

office of this Commonwealth, under the provisions of the Act aforesaid; and, on the other hand, it appears, that petitions and representations have also been made to the Legislature of this Commonwealth, by and on the part of a number of persons, calling themselves actual Settlers, and stating, That they have settled and improved a considerable part of the land lying within the claims of the aforesaid Companies, in consequence of the Act aforesaid, inviting them so to do; that, in most instances, when they began their improvements, the lands were, to the best of their knowledge, vacant and unoccupied; and that since their settlement, they have been much harrassed and threatened by the Agents of the Companies aforesaid: AND whereas it is indispensibly necessary, that the peace of that part of the State should be preserved, and complete justice done to all parties interested, as speedily and effectually as possible: AND whereas it hath been intimated to the Legislature, that from the present distracted and agitated state of the public mind, between those conflicting claims in that part of the State, a fair and impartial trial cannot be obtained, where so many persons are directly or indirectly interested in the event of the decision: AND whereas the Companies aforesaid, by their application to the Supreme Court of this Commonwealth, for a Mandamus, to compel the Secretary of the Land-office to complete their titles, did endeavour to put the question between them and this Commonwealth fairly to issue before the Judiciary: AND whereas it is just and proper, that the questions, both of Law and of Fact, arising under the Act aforesaid, should be fully, fairly, and speedily heard and decided; and the validity of all those titles that have been issued under certain Certificates of Justices of the Peace, within the territory aforesaid, known by the name of Prevention Certificates determined as well for the direction of the Officers of the Land-office, on behalf of this Commonwealth, as for settling the existing disputes between such grantees as have omitted or neglected to make the settlements, improvements, and residence, enjoined by the Act aforesaid; and the persons actually in possession of the same lands, and claiming under the provisions of the same Act: Therefore,

Section I. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same*, That at some time and place (not exceeding three months from the first day of the month of April, of the present year, as shall be most convenient to the Judges of the Supreme Court of this Commonwealth, or the majority of them, it shall be the duty of the said Judges, and they are hereby enjoined and required to meet together, and devise some method, either by means of a feigned issue, or otherwise, as in their judgment shall seem best of bringing before a Court and Jury, to be holden as herein after is directed, the following questions, respecting the claims to land within that part of the territory of this State north and west of

the rivers Ohio and Alleghany and Conewango creek, to wit: Are warrants heretofore granted under the Act of the 3d day of April, 1792, valid and effectual in law againſt this Commonwealth, ſo as to bar this Commonwealth from granting the ſame land to other applicants under the Act aforeſaid, in caſes where the warrantees have not fully and fairly complied with the conditions of ſettlement, improvement and reſidence, required by the ſaid Act, at any time before the date of ſuch warrants reſpectively, or within two years after? Are the titles that have iſſued from the Land-office, under the Act aforeſaid, whether by warrant or patent, good and effectual in law againſt this Commonwealth, or any perſon claiming under the Act aforeſaid, in caſes where ſuch titles have iſſued on the authority and have been grounded upon the certificates of two Juſtices of the Peace, uſually called Prevention Certificates, without any other evidence being given of the nature and circumſtances of ſuch prevention, whereby, as is alleged, the conditions of ſettlement, improvement and reſidence, required by the ſaid Act, could not be complied with? And as ſoon as the ſaid Judges have deviſed the form in which the queſtions above ſtated ſhall be brought to a hearing and deciſion before a Court and Jury as aforeſaid, they ſhall tranſmit the ſame to the Governor of this Commonwealth, whoſe duty it ſhall be, with the aſſiſtance of the Attorney-General of this Commonwealth, to carry the ſame into effect without delay.

Sec. II. *Be it enacted by the authority aforeſaid*, That for the purpoſe of hearing and deciding on the queſtions aforeſaid, and the facts relating thereto, a Jury ſhall be ſummoned, according to the method to be appointed by the Judges aforeſaid, conſiſting of the uſual number of diſintereſted perſons, inhabitants of the counties of Northumberland and Lycoming; which Jury ſhall be ſummoned, impannelled, and ſworn or affirmed, at the Court-houſe at Sunbury, in the ſaid county of Northumberland, at ſuch time as to the ſaid Judges, or a majority of them, ſhall be moſt convenient, provided the ſame be not deferred beyond the firſt Monday in December next, at which time and place the Judges of the Supreme Court aforeſaid, or the majority of them, ſhall meet, for the purpoſe of hearing and trying the queſtions aforeſaid, and the facts relating thereto, in conjunction with the ſaid Jury, in the uſual manner; at which trial and hearing it ſhall be competent to the ſaid Jury, under the conſtitutional direction of the Court, to decide upon the law and upon the facts, and if they think fit, to bring in a general verdict thereon; and it ſhall alſo be competent to any perſon, party in the controverſy, to offer evidence of the nature and circumſtances of the Prevention Certificates aforeſaid, and of the circumſtances of the country at the time to which the ſaid certificates relate, and alſo of every other fact tending to illuſtrate the queſtions aforeſaid, or to induce a full inveſtigation and fair deciſion thereon, which the Court ſhall conſider as evidence competent to be offered according to the uſual rules of law.

Sec. III. *Be it enacted by the authority aforesaid*, That it shall be the duty of the said Judges, at their meeting aforesaid, within three months from the first day of April next, to devise and direct in what manner and under what circumstances parties shall be admitted to the said suit, and what notice or notices shall be respectively given relating to the same; and they shall have power also to direct the Secretary of the Land-office to attend at the said trial with such books, papers and documents, as they may think fit to specify, or he may deem material to be produced and consulted thereat; and it shall be the duty of the said Judges to certify the verdict of the Jury and the judgment of the Court, on the trial aforesaid, to the Governor of this Commonwealth, previous to the meeting of the next Legislature.

Sec. IV. And in order to prevent the confusion that would arise from issuing different warrants for the same land, and to prevent lawsuits in future, respecting grants from the Land-office, under the aforesaid Act of April the 3d, 1792, *Be it enacted by the authority aforesaid*, That from and after the passing of this Act, the Secretary of the Land-office shall not grant any new warrant for land which he has reason to believe hath been already taken up under a former warrrant; but, in all such cases, he shall cause a duplicate copy of the application to be made, on which duplicate copy he shall write his name, with the day and year in which it was presented, and he shall file the original in his office, and deliver the copy to the party applying: *Provided always*, That on every application so to be made and filed, shall be certified, on the oath or affirmation of one disinterested witness, that the person making such application, or in whose behalf such application is made, is in actual possession of the land applied for; and such certificate shall mention also the time when such possession was taken; and the application so filed in the Secretary's-office shall be entitled to the same force and effect and the same priority in granting warrants to actual settlers as though the warrants had been granted at the time when the applications were filed; and should the decision of the Court and Jury at the trial aforesaid, be in favor of the claims of the actual settlers, the Secretary of the Land-office shall proceed to grant the warrants, upon the purchase-money being paid according to the priority of the applications filed in his office.

Sec. V. *Be it further enacted by the authority aforesaid*, That it shall be lawful for the Governor of this Commonwealth to appoint not more than two Counsel, learned in the law, to assist the Attorney General at the said trial on the part of this Commonwealth.

ISAAC WEAVER, jun. *Speaker of the House of Representatives.*

SAMUEL MACLAY, *Speaker of the Senate.*

Approved—April 2d, 1802.

THO: M'KEAN, *Gov. Com. Penns.*

Q. R.

Containing an account of the proceedings before the Legislature, during the passage of the preceding act.

Upon the report of the preceding bill, in the Senate, the following memorial, of the Holland Company, was presented.

To the Honorable the Senate, and House of Representatives of the Commonwealth of Pennsylvania.

THE Memorial and Representation, of Wilhem Willink, Nicolaas Van Staphorst, Pieter Stadnitski, Christiaan Van Eghen, Frederick Vollenhoven, and Rutgert, Jan Schimmelpenninck, associated under the name of the Holland Land Company,

Respectfully sheweth,

THAT a former Legislature of Pennsylvania, by an act entitled "An Act for the sale of the vacant land within this Commonwealth" passed on the 3d day of April, A. D, 1792, offered for sale the land north and west of the rivers Ohio and Alleghany, and west of Conewango creek, on the terms mentioned in that act. Your memorialists in pursuance thereof purchased on the faith of the Commonwealth 1162 Warrants for which the sum of ninety two thousand nine hundred and sixty dollars, was paid in the years 1792, and 1793, into the treasury of the Commonwealth being the purchase money thereof. Your memorialists without further delay forwarded the warrants to the proper deputy surveyors, and made every exertion in their power to procure surveys thereon and to settle and improve the lands surveyed, in conformity to the said act, by employing agents, purchasing and forwarding provisions and implements of husbandry, and inviting and bringing on settlers by liberal offers; a particular detail of which proceedings is contained in the deposition of Roger Alden, Esq. the General Agent, employed in this service, and whose constant residence has been in that country, a copy of which deposition is hereto annexed, as part of this memorial, and your memorialists pray may be read therewith. In the pursuit of these objects which was unremittingly continued each and every year from its commencement, your memorialists had expended on the 1st of January, A. D. 1800, in cash including the purchase money aforesaid, the

ſum of four hundred and three thouſand one hundred and ſixty nine dollars and eighteen cents; and ſince that time the further ſum of forty thouſand dollars, making in the whole at this time the ſum of four hundred and forty three thouſand one hundred and ſixty nine dollars, and eighteen cents. Your memorialiſts beg leave to recall to the recollection of your Honorable Houſe, the ſituation of the weſtern country, in the year 1792, and ſubſequent until the treaty of peace, with the Indians in December, 1795, by referring to the Meſſages of the Governor to the Legiſlature, during thoſe years as entered on the Journals of your houſe, and to ſundry Acts of Aſſembly, paſſed during that time, and particularly to thoſe contained in the 3d volume of the Laws, pages 19, 177, 335.

Your memorialiſts beg leave further, to repreſent that other warrant holders aſſociated under the name of the Pennſylvania Population Company, purchaſed about the ſame time, with your memorialiſts 1140 warrants, and paid therefor to the Commonwealth, ninety one thouſand two hundred dollars purchaſe money, purſuing a ſimilar plan of ſettlement, and improvement with your memorialiſts and expending in the courſe of the ſame period in the advancement of the objects contemplated in the act of April 1792, a ſum of money which on the 1ſt of January, A. D. 1801; amounted to two hundred and forty three thouſand four hundred and twelve dollars, including the purchaſe money aforeſaid, which ſum added to the ſum expended by your memorialiſts, amounts to ſix hundred and eighty ſix thouſand five hundred and eighty one dollars and eighteen cents, expended in about eight years, by theſe two Companies alone, for the ſettlement, and improvement of the weſtern parts of Pennſylvania, and which on a compariſon with the expences of the civil liſt of the Commonwealth, for the ſame period will amount very nearly, if not quite to the ſame ſum.

Your memorialiſts have been thus particular in detailing items in order to diſprove the aſſertions of a claſs of men, who have intruded on their lands, calling themſelves actual ſettlers, and who have petitioned your Honorable Houſe, and endeavoured in their petitions to ſtigmatiſe your memorialiſts by the moſt opprobious epithets: and to evince that it has been the real and ſincere deſire of your memorialiſts, to advance the beſt intereſts of the State, they flatter themſelves they can with an honeſt pride aſſert, that owing to their exertions and thoſe of the Pennſylvania Population Company, this part of the State has advanced more rapidly in improvement and cultivation than any other in the ſame time: and to further declare that had their purchaſes not been made, that country would at this time exhibit the ſame appearance of the northern, and north-weſtern parts of Lycoming county. It was the companies aforeſaid, that tranſported at great trouble, and expenſe from the State of New York, and diſtant parts of Pennſylvania, proviſions for the ſupport of the ſettlers before the country could ſupply any, which practice they continued until the people could ſupply themſelves.

In December, A. D. 1797, the Board of Property, (who were the conſtitutional organ eſtabliſhed by the Act of April, 1792, to carry the ſame into effect, ſo far as it depended on the Commonwealth) under the ſanction of the opinion of the Attorney-General, pointed out the mode of proof neceſſary for warrant-holders to procure to entitle them to patents for their lands, which was publiſhed in the Pittſburgh Gazette for public and general information. Your Memorialiſts proceeded in conformity to their directions, and patents were granted to them for 876 tracts of the 1162 purchaſed, and patents for the remainder would have been granted, had not ſome inaccuracies appeared in the returns of ſurvey of the remainder, which induced your Memorialiſts to obtain an order for a re-ſurvey, which was duly executed, and on the return of the re-ſurveys applications for patents were renewed: but at this time other Gentlemen conſtituted the Board of Property, and their opinion differing from the former Board, an application was made to the Supreme Court for a Mandamus to order patents to be granted your Memorialiſts on the re-ſurveys above mentioned. After argument, the Chief-Juſtice delivered his opinion, declaring it to be, that the titles of your Memorialiſts were perfected under the Act: Judges Yeates and Smith were of opinion they were not yet compleated; and Judge Brackenridge gave no opinion. As the opinions of the Judges expreſs their ſentiments fully on the ſubject, your Memorialiſts have procured copies thereof, which they have annexed, and exhibit with their memorial, for the ſatisfaction of your honorable Houſe.

Your Memorialiſts being informed that petitions from the Intruders aforementioned were preſented to your honourable Houſe, were happy to find by the report of the Committee to whom the petitions were referred, and entered on the Journals of the Senate on the 9th inſtant, (*a*) were of opinion, "that as the adverſe claim between the holders of warrants and actual ſettlers depend upon ſubſtantial matters of fact, they ought to be left to a Court and Jury of the vicinage. That the diſtribution of the Legiſlative, Executive and Judicial Powers of Government, into ſeparate and diſtinct departments, being a fundamental principle in Republican Governments, and eſſential to the preſervation of liberty and protection of property, and explicitly recognized in both the Federal and State Conſtitutions, which the Members of the Houſe are expreſsly ſworn to ſupport, the Legiſlature cannot evade the province of the Judiciary, without a perverſion of thoſe Conſtitutions and a violation of their ſolemn oaths.

"To make Legiſlative Grants and Rules of Conduct for the Citizens and the Executive and Judicial Departments of Government, is the province of the Legiſlature. A Law for a Rule of Conduct may be altered or repealed; but a Grant for a valuable conſideration cannot be revoked by a Legiſlative Act; nor a contract impaired, if the conditions are performed, not only ſo, becauſe the doing ſo is inconſiſtent with the principles of all free Governments; but be-

(*a*) Vide *ante*. p. 77.

cauſe the Conſtitution of this State declares, that no *expoſt facto* law, nor any law *impairing contracts*, ſhall be made: and the Fœderal Conſtitution alſo expreſsly forbids *expoſt facto* laws to be enacted.

"From a view of the ſtate of facts ſet forth in the petition compared with the principles herein expreſſed, the Committee offer the following Reſolution:

"Reſolved, That the matters ſet forth in the petition being ſuch as are only proper ſubjects for the deciſion of a Court and Jury of the vicinage, the prayer thereof ought not now to be granted by the Legiſlature."

That after ſuch unequivocal teſtimony on the part of the Senate, of the ſacred regard entertained by them for the rights of individuals, the juriſdiction and authority of Courts of Juſtice, and the injunctions of the Conſtitution: your Memorialiſts have ſeen with ſurpriſe and regret a Bill read in the Senate, without having been made the ſubject of previous conſideration, agreeably to the forms of your Honourable Houſe, and made the order for this day, which in its principles and operation tends to proſtrate the extenſive intereſts of your Memorialiſts, to the aggrandizement of a claſs of men who have aſſumed the character of *actual ſettlers*, but whoſe appropriate and legal name is that of *actual intruders*. To enter into a detail of the evidences ariſing on the face of the Bill, of its tendency to injure the rights of your Memorialiſts and advance the pretenſions of their opponents, would exceed the bounds which their reſpect for your Honourable Body has preſcribed to this repreſentation: but they cannot forbear to notice that it aſſumes, as the ſubject of legiſlation, the ſtipulations of matters of contract, which in the eye of reaſon, and under the proviſions of both the State and Federal Conſtitutions, can be the ſubject of Judicial Cognizance only: That it unneceſſarily abounds with numerous and partial recitals of Sections of the Act of the 3d of April, 1792, the principal part of which have been already acted upon by Courts of Juſtice, and for no other oſtenſible object than that of indirectly undoing what has been already done by judicial deciſion: That it oſtenſibly purports to preſcribe the form of the teſtimony and the manner of its admiſſion (things compleatly aſcertained already) of the facts required by that Law and in its enacting parts undertakes to declare what the teſtimony itſelf ſhall be, thereby aſſuming a power in one of the parties to the contract to put his own conſtruction to his own bargain: That it takes for granted, that lands regularly ſurveyed in purſuance of legal warrants on which actual ſettlements and improvements have not been made agreeably to the Act of the 3d of April, 1792, (though ſuch ſettlements and improvements are by the very terms of the Act, and the then ſtate of the country, excuſed from being made) are forfeited; and liable to be applied for by perſons who have intruded and ſat down upon them; which aſſumption is not only utterly denied to have any exiſtence in rea-

ſon or law, but as far as can be collected from the deciſions of Courts of Juſtice on that Act never will be eſtabliſhed, unleſs indeed it ſhould go into effect, under the *ex parte* proceedings contemplated by this Bill. Your Memorialiſts forbear to notice the peculiar phraſeology and the novel mode of procuring evidence, which it preſcribes under a conviction that the juſtice and integrity of your Honourable Houſe will afford an opportunity for illuſtration on the heads contained in it.

(Signed)

JAMES GIBSON, Attorney for the Holland Land Company.

Lancaſter, February 24, 1802.

I DO hereby Certify, That the foregoing twenty-two pages contain true copies of the Memorial of James Gibſon, Attorney for the Holland Land Company, and the opinions of the Judges, and the ſtatement of Roger Alden, which accompanied the ſaid Memorial, with their diſburſements, taken from the original papers now on the files of the Senate of Pennſylvania.

GEORGE BRYAN, Clerk.

Lancaſter, Pennſylvania,
April 16, 1802.

For the Opinions and Depoſition above mentioned, vide ante. *p.* 28. *p.* 48.

Extract from the Journals of the Senate on the subject of the preceding Memorial. Page 199.

IN SENATE,

Wedneſday, February 24, 1802.

MR. WHITEHILL preſented the Memorial and Repreſentation of James Gibſon, Attorney for the Holland Land Company, (together with papers containing the opinions of three of the Judges of the Supreme Court, &c. upon the ſubject of the Memorial) ſtating divers circumſtances relative to lands held by ſaid Company under the Commonwealth, remonſtrating againſt the proviſions of a

Bill now before the Senate, for the ſale of vacant lands, &c. and praying that an opportunity may be afforded for an illuſtration on the heads contained in ſaid Bill, &c. and the ſame, together with the papers connected therewith, were read, and

Laid upon the table.

On motion of Mr. Whitehill, ſeconded by Mr. Findley, and by ſpecial order,

The Memorial and Repreſentation of James Gibſon, Attorney for the Holland Land Company, was read the ſecond time.

Whereupon,

On motion of Mr. Whitehill, ſeconded by Mr. Gurney,

Reſolved, That the ſaid Memorial and Repreſentation be referred to the Committee to whom was referred the Bill, entitled "A Supplement to an Act, entitled "An Act for the ſale of vacant lands within this Commonwealth."

Friday, March 5, 1802. Pape 219.

Mr. Findley, from the Committee to whom was committed the Bill, intitled "A Supplement to an Act, entitled "An Act for the ſale of vacant lands within this Commonwealth," and alſo the Memorial of James Gibſon, Attorney for the Holland Land Company, on the ſubject of ſaid Bill, reported the Bill, with amendments; and the ſame was read as reported.

Memorial presented to the House of Repreſentatives, againſt the Bill, March 5th, 1802.

To the Honorable the Senate, and Houſe of Repreſentatives of the Commonwealth of Pennſylvania.

THE Memorial and Repreſentation of Wilhem Willink, Nicolaas Van Staphorst, Pieter Stadnitſki, Chriſtiaan Van Eghen, Frederick Vollenhoven, and Rutgert Jan Shimmelpenninck, aſſociated under the name of the Holland Land Company.

Reſpectfully ſheweth,

THAT a former Legiſlature of Pennſylvania, by an act entitled "An Act for the Sale of the vacant land, within this Commonwealth paſſed on the 3d day of April, A. D. 1792, offered for ſale the land north and weſt of the rivers Ohio and Alleghany, and weſt of Conewango creek, on the terms mentioned in that act.—Your memorialiſts in purſuance thereof purchaſed on the faith of the Commonwealth 1162 warrants for which the ſum of ninety-two

thouſand nine hundred and ſixty dollars, were paid in the years 1792 and 1793, into the Treaſury of the Commonwealth being the purchaſe money thereof. Your memorialiſts without further delay forwarded the warrants to the proper Deputy Surveyors and made every exertion in their power to procure ſurveys thereon, and to ſettle and improve the lands ſurveyed in conformity to the ſaid Act, by employing agents, purchaſing and forwarding proviſions and implements of huſbandry, and inviting and bringing on ſettlers by liberal offers, a particular detail of which proceedings is contained in the depoſition of Roger Alden, Eſquire, the general agent employed in this ſervice, and whoſe conſtant reſidence has been in that country; a copy of which depoſition is hereto annexed as part of this Memorial, and your Memorialiſts pray may be read therewith. In the purſuit of theſe objects, which was unremittingly continued each and every year from its commencement, your Memorialiſts had expended on the firſt of January, A. D. 1800, in caſh, including the purchaſe-money aforeſaid, the ſum of four hundred and three thouſand one hundred and ſixty-nine dollars and eighteen cents; and ſince that time the further ſum of forty thouſand dollars, making in the whole, at this time, the ſum of four hundred and forty-three thouſand one hundred and ſixty-nine dollars and eighteen cents.—Your Memorialiſts beg leave to recall to the recollection of your Honourable Houſe, the ſituation of the weſtern country in the year 1792, and ſubſequent until the treaty of peace with the Indians in December 1795, by referring to the Meſſages of the Governor to the Legiſlature, during thoſe years, as entered on the Journals of your Houſe, and to ſundry Acts of Aſſembly paſſed during that time, and particularly to thoſe contained in the 3d Volume of the Laws, pages 19. 177, 335.

Your Memorialiſts beg leave further to repreſent that other warrant-holders aſſociated under the name of the Pennſylvania Population Company, purchaſed about the ſame time, with your Memorialiſts, 1140 warrants, and paid therefor to the Commonwealth, ninety-one thouſand two hundred dollars, purchaſe money, purſuing a ſimilar plan of ſettlement and improvement with your Memorialiſts, and expending in the courſe of the ſame period, in the advancement of the objects contemplated in the Act of April 1792, a ſum of money, which on the firſt of January, A. D. 1801, amounted to two hundred and forty-three thouſand four hundred and twelve dollars, including the purchaſe-money aforeſaid, which ſum, added to the ſum expended by your Memorialiſts, amounts to ſix hundred and eighty-ſix thouſand five hundred and eighty-one dollars and eighteen cents, expended in about eight years, by theſe two Companies alone, for the ſettlement and improvement of the weſtern parts of Pennſylvania, and which on a compariſon with the expences of the Civil Liſt of the Commonwealth, for the ſame period, will amount very nearly, if not quite, to the ſame ſum.

Your Memorialiſts have been thus particular in detailing items in order to diſprove the aſſertions of a claſs of men who have intruded on their lands, calling themſelves actual ſettlers, and who have petitioned your Honourable Houſe, and endeavoured in their petitions to ſtigmatize your Memorialiſts by the moſt approbrious epithets.—And to evince that it has been the real and ſincere deſire of your Memorialiſts to advance the beſt intereſts of the State, they flatter themſelves they can with an honeſt pride aſſert, that owing to their exertions and thoſe of the Population Company, this part of the State has advanced more rapidly in improvement and cultivation than any other in the ſame time, and to further declare that had their purchaſes not been made, that country would at this time exhibit the ſame appearance of the northern and north-weſtern parts of Lycoming county. It was the Companies aforeſaid that tranſported at great trouble and expence, from the State of New-York and diſtant parts of Pennſylvania, proviſions for the ſupport of the ſettlers before the country could ſupply any, which practice they continued until the people could ſupply themſelves.

In December, A. D. 1797, the Board of Property (who were the conſtitutional organ eſtabliſhed by the Act of April, 1792, to carry the ſame into effect, ſo far as it depended on the Commonwealth) under the ſanction of the opinion of the Attorney-General, pointed out the mode of proof neceſſary for warrant-holders to procure, to entitle them to patents for their lands, which was publiſhed in the Pittſburgh Gazette for public and general information. Your Memorialiſts proceeded in conformity to theſe directions, and patents were granted to them for 876 tracts of the 1162 purchaſed; and patents for the remainder would have been granted, had not ſome inaccuracies appeared in the returns of ſurvey of the remainder, which induced your Memorialiſts to obtain an order for a re-ſurvey, which was duly executed; and on the return of the re-ſurveys, application for patents was renewed: but at this time other Gentlemen conſtituted the Board of Property, and their opinion differing from the former Board, an application was made to the Supreme Court for a Mandamus to order patents to be granted your Memorialiſts on the re-ſurveys above mentioned. After argument, the Chief-Juſtice delivered his opinion, declaring it to be "That the titles of your Memorialiſts were perfected under the Act:"—Judges Yeates and Smith were of opinion, "they were not yet compleated;"—and Judge Brackenridge gave no opinion. As theſe opinions of the Judges expreſs their ſentiments fully on the ſubject, your Memorialiſts have procured copies thereof; which they have annexed and exhibit with their Memorial for the ſatisfaction of your Honourable Houſe.

Your Memorialiſts relying on the integrity, wiſdom and juſtice of your Honourable Body, confidently hope that on a ſubject ſo intereſting to your Memorialiſts and to all other warrant-holders, and ſo

momentous to the State, it will be conſidered as a matter of indiſpenſable obligation "to hear both ſides"—That ſatisfactory information may precede the call to action—Preſuming that this rule, which has become a maxim among mankind in their enquiries after truth, will be conſidered as the ſureſt guide to the attainment of that firſt of objects, on this important ſubject: We hope to evince to the ſatisfaction of your Honourable Houſe that the illiberal abuſe, with which the petitions preſented to your Honourable Body by men aſſuming the title of *actual Settlers*, (but whoſe real deſcription is that of *actual Intruders*) againſt your Memorialiſts is utterly without foundation; and that ſo far from meriting ſuch opprobrium, we have, though foreigners, uniformly evinced an unequivocal attachment to the principles of your Government, and efficiently contributed to the ſupport of your revolutionary exertions, when even hope and human fortitude were put to their ſevereſt trial, by procuring and ſecuring for you the Loan in Holland.

That in our purchaſes (now the ſubject of complaint) we were preceded by your own invitations, and that by placing implicit confidence in the plighted faith of Pennſylvania, till then and yet unſtained, we paid into your coffers and diſburſed in the improvement and amelioration of your wilderneſſes into a ſtate of ſociety, four hundred and forty-three thouſand one hundred and ſixty-nine dollars and eighteen cents.

That our conſtant command of the means always put it in our power to have met the letter of our engagements, had not a ſavage war, which we could not foreſee, and which the Government itſelf was not able to prevent, and which the Act itſelf provided againſt, damped the enterpriſe and chilled the ſpirit of emigration into that quarter: and that ſince hoſtilities have ceaſed, the lawleſs aggreſſions and intruſions of our opponents (many of whom have fattened upon our generoſity and accommodation) have never ceaſed to be the conſtant cauſe of embarraſſment and interruption. That though the complaints of our opponents are oſtenſibly directed againſt us, they are really deſigned againſt the proceedings of the Courts of Juſtice in the expoſition of the Law of the 3d of April, 1792. That the ſubject you are ſo clamorouſly called to act upon by our opponents is a ſubject of contract, which you have neither the means of inveſtigating, nor the power of acting upon, or we ſhould moſt chearfully join iſſue with them before you, as both the State and Federal Conſtitutions declare the expoſition of matters of contract to be the ſubject of judicial cognizance only.

JAMES GIBSON, on behalf of the
Holland Company.

Lancaſter, March 4, 1802.

I DO hereby certify, that the foregoing memorial and repreſentation of James Gibſon, Eſqr. Attorney at Law, on behalf of the

Holland Company—and the depoſition of Roger Alden agent for ſaid Company, are true copies from the originals, now remaining on the files of the Houſe of Repreſentatives of the Commonwealth of Pennſylvania—and that the ſame were read, March 5th 1802, and referred to a ſpecial committee to report thereon.

MATTHEW HUSTON, C. H. R.

For the opinions, &c. referred to, vide ante. *p.* 28. 48.

Extract from the Journals of the House of Representatives.

March 5th, 1802. page 335.

Mr. Mitchel preſented a memorial, accompanied with ſundry documents, from James Gibſon, in behalf of the Holland Company, ſtating their extraordinary and meritorious exertions to promote the population, improvement and cultivation of their lands, ſituate on the north and north-weſt ſides of the rivers Ohio, Allegheny and Conewango, and *praying Legiſlative interferences in their behalf*, againſt unjuſt intruders, who have petitioned the Legiſlature, under the appellation of, "Actual Settlers:" and the ſaid memorial and documents were read, and referred to the committee appointed the 30th of December laſt, to whom were added Mr. Mitchel and Mr. Follmer, "On the failure of eſtabliſhing ſettlements on ſaid lands," to report thereon.

Extracts from the Journals of the Senate.

March 13, 1802. page 249.

Mr. Findley from the committee to whom was referred on the 11th, inſt. the memorial from the inhabitants of that part of the ſtate ſituated north and north weſt of the rivers Ohio and Alleghany and Conegwango creek, and on the 12th inſtant a ſimilar memorial; on leave given reported a Bill entitled "An act to ſettle the controverſies ariſing from contending claims to land within that part of the territory of this Commonwealth north and weſt of Ohio and Alleghany and Conewango creek" and the ſame was read the firſt time.

Monday, March 15th, 1802, page 255.

On motion of Mr. Findley, ſeconded by Mr. Porter,

Reſolved, That the ſecond reading of the Bill entitled, "An act to ſettle the controverſies ariſing from contending claims to lands,

within that part of the territory of this commonwealth, north and weſt of Ohio and Alleghany and Conewanga creek," be the order of the day for the 16th inſtant.

Monday, March 16th, 1802, page 258.

According to the order of the day, the bill, entitled, "An act to ſettle the controverſies ariſing from contending claims to lands, within that part of the territory of this Commonwealth, north and weſt of Ohio and Alleghany and Conewango creek," was read the ſecond time.

Whereupon,

The Senate reſolved itſelf into Committee of the whole, for the purpoſe of taking the ſaid Bill into conſideration.

Mr. Rodman was appointed Chairman.

The Speaker left the chair, and Mr. Rodman was placed therein.

After ſome time, the ſpeaker reſumed the chair.

Mr. Rodman from the committee of the whole reports,

That the committee of the whole, having had under conſideration the Bill, entitled, "An act to ſettle the controverſies ariſing from contending claims to lands, within that part of the territory of this Commonwealth, north and weſt of Ohio and Alleghany and Conewango creek," report the ſaid Bill, as committed to them; and the ſame was read, as reported.

On the Committee of the Senate to whom the former Memorial was preſented reporting unfavourably, this memorial was preſented, requeſting to be heard by counſel at the Bar of the Senate againſt the Bill.

To the Honourable the Senate of the Commonwealth of Pennſylvania.

THE MEMORIAL and Repreſentation of the Holland Land Company.

Reſpectfully ſheweth,

THAT your memorialiſts, have ſeen with ſurpriſe and regret a bill reported to your honourable Houſe, which in its principles and tenor is in direct hoſtility with the extenſive intereſts of your memorialiſts, and other warrant holders under the Act of the 3d, of April, 1792, and which immediately tends to make that confuſion which has ariſen out of the incongruity of that act worſe confounded.

Our high ſenſe of the wiſdom integrity and juſtice of your honorable Body, induce us to avoid extending the bounds of this remonſtrance, by entering into a detailed expoſure of the various ways in which this bill commits the eſſential concerns of your memorialiſts, but a ſenſe of duty impoſes on us the taſk of adverting to a few of its prominent features, to evince the well founded alarm which it has excited in your memorialiſts, and to invite the attention of your Honourable Houſe to a full and impartial inveſtigation of it. Unfortunately for the attainment of preciſion, accuracy, and juſt ideas on a ſubject ſo momentous to the State, and ſo intereſting to your memorialiſts, which is ſo devoutly to be wiſhed for, the ſubject is introduced by lengthy and numerous recitals of unimportant matter, calculated to attain no valuable object, and which ordinarily ſpeaking, are the lurking corners of doubt, uncertainty and conjecture, whence the vital principles of Legiſlative acts are often aſſailed and frequently imminently endangered. But ſtill more unfortunately, for your memorialiſts, the preamble to the bill miſtaking the true and only object of the former memorial, preſented to your Honorable Houſe by your Remonſtrants which was adapted to repel the groundleſs and unjuſt aſperſions caſt upon your memorialiſts by the petitions preſented to your honorable Body by our opponents, by exhibiting a correct ſtatement of our actual ſituation, of the deſtructive tendency of the Bill then pending, and of the action of the judiciary of your government on the claims in controverſy between us and our opponents for the information of your honourable Houſe ; repreſents your memorialiſts as "praying for the interpoſition of the Legiſlature" on matters of contract which your memorialiſts have always been inſtructed and verily believe under the State and Federal Conſtitutions of your country, cannot be the ſubject of Legiſlative but judicial cognizance only.

But yet ſtill moſt unfortunately for your memorialiſts from this moſt incongruous mode of Legiſlating on ſubjects of invaluable magnitude to yourſelves, to your conſtituents, and to your memorialiſts, the honorable committee who reported the preſent bill, have inadvertently introduced into the Preamble the expreſſion of a legiſlative opinion on the conſtruction of their own legiſlative contract with your memorialiſts and others in the words following to wit "and although it evidently appears from the act aforeſaid (meaning the act of 3d, April, 1792) that the Commonwealth regarded a full compliance with thoſe conditions of ſettlement improvement and reſidence as an indiſpenſible part of the purchaſe or conſideration of the lands granted" which right of conſtruing, contracts is expreſsly excepted by the good People of Pennſylvania out of their grant of Legiſlative power by the 17th ſection of the 9th article of your conſtitution, which ordains that *no ex poſt facto law nor any law impairing contracts ſhall be made;* for the purpoſe as they themſelves have declared, of recognizing and unalterably eſtabliſhing the general great and eſſential principles of liberty and free government. Your memorialiſts, fondly hoped

that they would have found in the enacting parts of the Bill, clauſes calculated to allay their apprehenſions of danger ſo juſtly excited by the introductory parts of it, and notwithſtanding they entered upon the examination with a prediſpoſition to approve of every thing which could have the remoteſt claim to approbation from them, and even to be ſilent when they could not approve, where ſilence could have the leaſt ſemblance of virtue, nay even to perſevere in it where that perſeverance would not be a total direliction of their rights, and yet they are conſtrained to declare in oppoſition to all their anxieties againſt it, that the ſections of the Bill have embodied all the apprehenſions excited by the introductory parts of it, and even ſurpaſſed them. Your memorialiſts at preſent forbear to advert to the queſtions propounded in the firſt ſection of the Bill, though they entertain a full conviction that they are not predicated on that ground which is calculated to attain the laudable objects of preſerving the peace of that ſection of the country where the lands lie, and of doing complete juſtice to all parties. The ſecond ſection of the Bill declares in the preceding part of it that the queſtions aforeſaid, and the facts relating thereto ſhall be heard and tried by the court and jury "*in the uſual manner*" which every perſon knows in civil caſes makes the court the conſtitutional judges of matters of law, and the jury the conſtitutional judges of matters of fact, the ſucceeding part of the ſame clauſe declares that it ſhall be competent to the jury under the conſtitutional direction of the court to decide upon the law, and the facts, and if they think fit to bring in a general verdict, which at once ſupercedes the conſtitutional power of the court, recognized in the firſt part of the clauſe, transfers the right of conſtruing and deciding upon the laws of your country from your judges whom both your conſtitution and laws recognize as the intelligent and proper organ; to a jury, whoſe avocations preclude them from the requiſite information to judge of matters of law, and whoſe province both by the conſtitution and laws in all civil caſes is, as being moſt competent, to decide on matters of fact. In civil caſes between citizen and citizen and uniformly heretofore between your own citizens and foreigners, a verdict of a jury, which infringed and broke in either on your common law or ſtatutes, was in the power of your courts to ſet aſide, for the purpoſe of adminiſtering equal right and juſtice to all men: but in the preſent bill, your memorialiſts, ſee with pain that their rights acquired under your own invitation, and under the plighted faith of a legiſlative contract, to the amount of nearly half a million of dollars; is to be denied the uſual ſecurity of judicial cognizance which your conſtitution and laws extend to the moſt trifling concerns of your own citizens. The ſubſequent part of the ſame ſection, inſtead of leaving it to the court to judge what evidence is admiſſible, and what is not on the trial of *your own contract with us*, which your own and the Federal Conſtitution puts out of the reach of Legiſlative controul, undertakes to declare that it ſhall be competent to any perſon, party in the contro-

verſy to offer evidence of the nature and circumſtances of the prevention certificates, and of the circumſtances of the country, at the time to which the ſaid certificates relate, a right which is excluſively veſted in the courts and which no power on earth can violate while the conſtitution of your country remains.

Your memorialiſts refrain from purſuing this buſineſs, into that variety of views in which it might be placed, as illuſtrative of the want of power in the Legiſlature to act in the manner—which the bill preſcribes, and alſo from going into further detail on the other parts of the bill, under a full conviction that your honorable Body will, if it ſhould be thought neceſſary to proceed on the preſent bill allow your memorialiſts to be heard at the bar of your honorable Houſe in ſupport of their rights, which they verily believe will be impaired by this Bill if it ſhould paſs into a law.

The Holland Company
by JAMES HOPKINS
their Counſel.

March 17th, 1802.

I DO hereby certify that the foregoing three pages contain a true copy of the memorial of James Hopkins, Counſel on behalf of the Holland Land Company and its indorſement, as taken from the original, now on the files of the Senate of Pennſylvania.

GEORGE BRYAN, Clk.

Lancaſter, Pennſylvania,
16th, April, 1802.

Extract from the Journals of the Senate.

March 17, 1802, page 260.

Mr. Whitehill preſented a memorial and repreſentation of the Holland Land Company, by J. Hopkins their Counſel remonſtrating againſt the proviſions of a Bill entitled "an An act to ſettle the controverſies ariſing from contending claims to lands within that part of the territory of this commonwealth, north and weſt of Ohio and Alleghany and Conewango creek" now before the Senate, as they reſpect the intereſts of the ſaid Company, and praying that ſhould the Senate proceed in the ſaid Bill, they may be permitted to be heard at the Bar of the Senate by Counſel in ſupport of the rights of ſaid Company; and the ſame was read and laid upon the table.

March 19, 1802, page 271.

According to the order of the day, the Bill, entitled, "An act to ſettle the controverſies ariſing from contending claims to lands,

within that part of the territory of this Commonwealth, north and weſt of Ohio and Alleghany and Conewango creek," as reported by the committee of the whole, was read the ſecond time, and conſidered by Paragraph.

Section 2 having been read,

It was moved by Mr. Hamilton, ſeconded by Mr. Pearſon, and agreed, that, in line 6, the word "indifferent," be ſtruck out; and the word "diſintereſted," be inſerted in place thereof.

Moved by Mr. Gurney; ſeconded by Mr. Jones.

That all the words, from the word "manner," in line 17, to the end of the ſection, be ſtruck out.

The queſtion on the motion being put, was determined in the negative.

Moved by Mr. Findley, ſeconded by Mr. M'Arthur,

That, in line 19, the word "Conſtitutional," be ſtruck out.

The queſtion on the motion being put, was determined in the negative.

The ſection, as amended, was agreed to.

The Preamble having been read,

It was moved by Mr. Gurney, ſeconded by Mr. Jones,

That the preamble be poſtponed, for the purpoſe of taking into conſideration a ſubſtitute, read by Mr. Gurney in his place, as follows, to wit:

Whereas, preſerving the peace and good order of that part of this Commonwealth, which lies north and weſt of the Ohio and Alleghany and Conewango creek, and doing equal right and juſtice to all parties concerned, is of the firſt importance.

After Debate.

The Yeas and nays on the queſtion, on the motion were called for by Mr. Gurney, ſeconded by Mr. Jones; and the members voted as follows, to wit:

YEAS.

Meſſrs. Barton, Carpenter, Ewing, Gurney, Jones, Whelen. 6.

NAYS.

Meſſrs. Findley, Griffin, Hamilton, Harris, Hartzell, Johnſton, Lower, M'Arthur, Mewhorter, Morton, Orth, Pearſon, Piper, Porter, Reed, Rodman, Whitehill, Maclay, Speaker. 18.

So it appeared that there were ſix yeas, and eighteen nays; and that the queſtion was determined in the negative.

Moved by Mr. Barton, ſeconded by Mr. Whelen,

That the preamble be amended, by ſtriking out all the words, from the beginning of line 42, to the word "and," in line 49.

After Debate,

The yeas and nays on the queſtion, on the motion, were called for by Mr. Barton, ſeconded by Mr. Whelen; and the members voted as follow, to wit:

YEAS.

Meſſrs. Barton, Carpenter, Ewing, Gurney, Harris, Jones, Whelen. 7.

NAYS.

Meſſrs. Findley, Griffin, Hamilton, Hartzell, Johnſton, Lower, M'Arthur, Mewhorter, Morton, Orth, Pearſon, Piper, Porter, Reed, Rodman, Whitehill, Maclay, Speaker. 17.

So it appeared that there were ſeven yeas, and ſeventeen nays; and that the queſtion was determined in the negative.

On motion of Mr. Whitehill, ſeconded by Mr. Orth,

Agreed, That, in line 42, the word, "evidently," be ſtruck out.

The preamble, as amended, was agreed to.

The title of the Bill having been read,

It was moved by Mr. Gurney, ſeconded by Mr. Jones,

That the further conſideration of the title be poſtponed, for the preſent, for the purpoſe of taking into conſideration a reſolution, read by Mr. Gurney in his place, as follows, to wit:

Reſolved That the Holland Land Company be heard, by counſel, at the Bar of this houſe, agreeably to the prayer of their petition, upon the Bill, entitled, "An act to ſettle the controverſies ariſing from contending claims to lands, within that part of the territory of this Commonwealth, north and weſt of Ohio and Alleghany and Conewango creek."

After Debate,

The yeas and nays on the queſtion, on the motion, being called for by Mr. Hamilton, ſeconded by Mr. Jones, the members voted as follow, to wit:

YEAS.

Meſſrs. Barton, Carpenter, Ewing, Gurney, Jones, Whelen. 6.

NAYS.

Meſſrs. Findley, Griffin, Hamilton, Harris, Hartzell, Johnſton, Lower, M'Arthur, Mewhorter, Morton, Orth, Pearſon, Piper, Porter, Reed, Rodman, Whitehill, Maclay, Speaker. 18.

So it appeared that there were ſix yeas, and eighteen nays; and that the queſtion was determined in the negative.

The title of the Bill having been agreed to,

Ordered, That the ſaid Bill be tranſcribed, for the third reading.

March 20, 1802, page 276.

The bill entitled, "An act to ſettle the controverſies ariſing from contending claims to lands, within that part of the territory of this

Commonwealth, north and weſt of Ohio and Alleghany and Conewango creek," was read the third time.

Whereupon,

Reſolved, That this bill do paſs; and

Ordered, That the ſaid bill be tranſmitted to the Houſe of Repreſentatives for concurrence.

Extract from the Journals of the House of Representatives.

March 20, 1802, page 399.

Mr. Bryan, the Clerk of the Senate, being introduced, preſented for concurrence, the bill, entitled "An act to erect Weſt-Hanover townſhip, in the county of Dauphin, into a ſeparate election diſtrict," which was read the firſt time, and

Ordered, That Thurſday next be aſſigned for the ſecond reading of the ſaid bill, and that it be the order for that day. And he alſo preſented for concurrence, the bill, entitled "An act to ſettle the controverſies ariſing from contending claims to lands within that part of the territory of this commonwealth, north and weſt of Ohio and Alleghany, and Conewango creek," which was read the firſt time, and

Ordered, That Wedneſday next be aſſigned for the ſecond reading of the ſaid bill, and that it be the order for that day.

March 24, page 420.

Agreeably to the order of the day, (The rule for going into committee of the whole, being in this caſe diſpenſed with.) The bill from the Senate entitled "An act to ſettle the controverſies ariſing from contending claims to lands within that part of the territory of this Commonwealth, north and weſt of Ohio and Alleghany and Conewango creek," was read the ſecond time.

And the firſt ſection being under conſideration.

A motion was made by Mr. Mitchel, ſeconded by Mr. Boileau, to inſert in line 16, next after the word "*the*" the word "*rivers*"

Which was determined in the affirmative, and the ſection adopted.

The ſecond ſection being under conſideration.

A motion was made by Mr. Boileau, ſeconded by Mr. Mitchel, to inſert in line 4, next after "*the*" the word "*common*" and to

ſtrike from lines 4 and 5, the word "*to be appointed by the judges aforeſaid.*"

Which was determined in the affirmative, and the ſection adopted.

The preamble being under conſideration.

A motion was made by Mr. M'Elroy, ſeconded by Mr. Franklin, to inſert in lines 6 and 58, next after the word "*the*" the word "*river*"

Which was determined in the affirmative.

A motion was made by Mr. Boileau, ſeconded by Mr. Mitchel, to poſtpone the further conſideration of the preamble together with the bill for the preſent.

Which was determined in the affirmative.

On the Bill being ſent to the Houſe of Repreſentatives, the following Memorial, requeſting to be heard by Counſel, was preſented—but the requeſt was refuſed, and the Bill paſſed.

To the Honourable the Houſe of Repreſentatives of the Commonwealth of Pennſylvania.

THE MEMORIAL and Repreſentation of the Holland Land Company,

Reſpectfully Sheweth,

THAT your Memorialiſts have ſeen with concern a Bill ſent to your Honourable Houſe by the Honourable Senate, which in its principles and tenor is in direct hoſtility with the extenſive intereſts of your memorialiſts and other warrant-holders under the Act of the 3d of April, 1792, and which immediately tends to make that confuſion which has ariſen out of the incongruity of that Law ſtill worſe confounded.

Our high ſenſe of the wiſdom, integrity and juſtice of your honourable Body, induced us to avoid extending the bounds of this remonſtrance, by entering into a detailed expoſure of the various ways in which this Bill commits the eſſential concerns of your memorialiſts; but a ſenſe of duty impoſes on us the taſk of adverting to a few of its prominent features, to evince the well-founded alarm, which it has excited in your memorialiſts, and to invite the attention of your honourable Houſe to a full and impartial inveſtigation of it. Unfortunately for the attainment of preciſion, accuracy, and juſt ideas, ſo devoutly to be wiſhed for on a ſubject ſo momentous to the State, and ſo intereſting to your memorialiſts, the Bill is introduced by lengthy and numerous recitals of unimportant matter, calculated to attain no valuable object; and which, ordinarily ſpeaking, are the lurking corners of doubt, uncertainty and conjecture; whence the

vital principles of legiſlative acts are often aſſailed, and frequently imminently endangered.

But ſtill more unfortunately for your memorialiſts, the preamble to the Bill, miſtaking the true object of the former memorial preſented to the Legiſlature by your remonſtrants, repreſents your memorialiſts "as praying for the interpoſition of the Legiſlature," on the ſubject matter of the Bill which relates to the contract between the Commonwealth and your memorialiſts: which your memorialiſts have always been inſtructed, and verily believe, under the State and Federal Conſtitutions of your country, cannot be the ſubject of legiſlative but judicial cognizance only.

But yet ſtill moſt unfortunately for your memorialiſts, from this moſt incongruous mode of legiſlating, on ſubjects of incalculable magnitude to yourſelves, to your conſtituents, and to your memorialiſts, the preamble to the Bill makes the Legiſlature give their opinion on the conſtruction of their own legiſlative contract with your memorialiſts and others, in the words following, to wit:

"And although it appears from the Act aforeſaid, (meaning the Act of the 3d of April, 1792) that the Commonwealth regarded a full compliance with thoſe conditions of ſettlement, improvement, and reſidence, as an indiſpenſable part of the purchaſe or conſideration of the lands granted;"—which right of conſtruing contracts is expreſsly excepted by the good people of Pennſylvania out of their grant of Legiſlative power, by the 17th Section of the 9th Article of your Conſtitution, which ordains, that no *expoſt facto* Law, nor any Law impairing contracts, ſhall be made, for the purpoſe, as they themſelves declare, of recognizing and unalterably eſtabliſhing the general, great and eſſential principles of liberty and free Government. Your memorialiſts fondly hoped that they would have found in the enacting parts of the Bill, clauſes calculated to allay their apprehenſions of danger, ſo juſtly excited by the introductory parts of it; and, notwithſtanding, they entered upon the examination with a pre-diſpoſition to approve of every thing, which could have the remoteſt claim to approbation; and even to be ſilent when they could not approve, where ſilence could have the leaſt ſemblance of virtue; nay, even to perſevere in it, when that perſeverance would not be a total dereliction of their rights; and yet they are conſtrained to declare, in oppoſition to all their anxieties, againſt it, that the ſections of the Bill have embodied all the apprehenſions excited by the introductory parts of it, and even ſurpaſſed them. Your memorialiſts at preſent forbear to advert to the queſtions propounded in the firſt ſection of the Bill, though they entertain a full conviction that they are not predicated on that ground which is calculated to attain the laudable objects of preſerving the peace of that ſection of the country where the lands lie; and of doing complete juſtice to all parties. It is reſpectfully ſubmitted, that neither the place, nor the manner of hearing, are adapted to the doing of equal right and juſ-

tice to all the parties concerned; which we are convinced is, on the part of your honourable Houſe, the only object of this extraordinary Act of Legiſlation:—Not the place, becauſe a recurrence to your Public Officers, on a trial ſo novel, and ſo important, will, notwithſtanding all the providence which the moſt watchful foreſight can inſpire; render repeated applications in the very moment of trial neceſſary, to guard againſt inadvertence, and to obviate ſurpriſe, which eſſential requiſite to an impartial and fair hearing, would be loſt at the diſtance of one hundred miles; and a trial the moſt extenſive and intereſting that your country ever knew, be ſubjected to the hazard of being decided on the ground of accident, and not on the principle of right.

Your memorialiſts fear, that the place preſcribed for hearing, although not within the ſphere of territory embraced by the queſtions to be tried, is emphatically within the ſphere of feeling: from their ſituation and relation, which would (from the infirmities of human nature) not allow the Jurors to ſtand indifferent, as they ſtand unſworn, when called to the book to be ſworn.

Your memorialiſts confiding in the dignified pride of American Patriotiſm, which preſcribes to herſelf as her firſt rule of action, to do unto others as ſhe would wiſh others to do unto her, under like circumſtances; fondly hope that there will be found in the county where the public offices are, and in the ſurrounding counties of Cheſter, Berks, Dauphin, Cumberland and York, (if it ſhould be thought neceſſary to take ſuch an extenſive range) Jurymen ſuperior to every exception. As to the manner of hearing, the ſecond ſection of the bill declares that the queſtions aforeſaid and the facts relating thereto ſhall be heard and tried by the court and jury "in the uſual manner" which every perſon knows, in civil caſes, makes the court the conſtitutional judges of matters of law and the jury the conſtitutional judges of matters of fact: whereas the ſucceeding part of the ſame clauſe declares that it ſhall be competent to the jury under the conſtitutional direction of the court to decide upon the law and the facts and if they think fit to bring in a general verdict: which at once ſuperſedes the conſtitutional power of the court recognized in the firſt part of the clauſe: transfers the right of conſtruing and deciding upon the laws of your country from your judges whom both your conſtitution and laws recognize as the intelligent and proper organ; to a jury whoſe avocations preclude them from the requiſite information to judge of matters of law; and whoſe peculiar and appropriate province it is, in all civil caſes, as being moſt competent, conſtitutionally to decide on matters of fact.

In civil caſes, between citizen and citizen and uniformly heretofore between your own citizens and foreigners a verdict of a Jury which infringed and broke in upon your Common Law or Statutes was in the power of your Courts to ſet aſide for the purpoſe of adminiſtering equal right and juſtice to all men: but in the preſent

bill your memorialiſts ſee with pain that their rights acquired under your own invitation, and under the plighted faith of a legiſlative contract to the amount of nearly half a million of dollars; is attempted indirectly to be denied the uſual ſecurity of judicial cognizance; which your conſtitution and laws extend to the moſt triſling concerns of your own citizens. The ſubſequent part of the ſame ſection, inſtead of leaving it to the Court to judge what evidence is admiſſable, and what is not, on the trial of your own contract with us; which your own and the Federal Conſtitutions puts out of the reach of Legiſlative controul; undertakes to declare "that it ſhall be competent to any perſon party in the controverſy to offer evidence of the nature and circumſtances of the prevention certificates and of the circumſtances of the country at the time to which the ſaid certificates relate"—a power which is excluſively veſted in the Courts, and which no power on earth can violate, while the Conſtitution of your country remains.

Your memorialiſts refrain from purſuing this buſineſs into that variety of views in which it might be placed, as illuſtrative of the want of power in the Legiſlature to act in the manner the bill preſcribes; and alſo from going into detail on the other parts of the bill under a full conviction that your Honorable Body, will, if it ſhould be thought neceſſary, allow your memorialiſts to be heard at the Bar of your Honorable Houſe in ſupport of their rights, which they verily believe, will be impaired by this bill, if it ſhould paſs into a Law.

The Holland Land Company
by JAMES HOPKINS
March 25, 1802. *their Counſel.*

I DO hereby certify that the foregoing Memorial and Repreſentation of the Holland Land Company, by their Counſel James Hopkins Eſq. Attorney at Law, is a true copy from the original, now remaining on the files of the Houſe of Repreſentatives of the Commonwealth of Pennſylvania, and that the ſame was read March 25th, 1802 and referred to a ſpecial committee to report thereon.

MATHEW HUSTON, C. H. R.

Extract from the Journals of the House of Representatives.

March 25, 1802, page 423.

Mr. Boileau preſented a memorial from the Holland Land Company, containing various reaſoning in favor of ſaid company, relative to the controverſy between them and certain actual ſettlers of the lands north and north-weſt of the rivers Ohio, Allegheny and Connewango

creek; and the said memorial was read and referred to Mr. Boileau, Mr. Jesse Moore and Mr. R. Porter, to report thereon.

March 26, page 432.

Mr. Boileau from the committee appointed, yesterday A. M. on the memorial of the Holland land company, requesting to be heard by counsel at the bar of this House, concerning a bill, entitled "An Act to settle the controversies arising from contending claims to lands within that part of the territory of this commonwealth, north west of Ohio and Alleghany, and Conewango creek," made report, which was read as follows, to wit:

That they have duly considered the subject submitted to them, and are of opinion, that the law can be established on such principles as to do justice to all the parties concerned without the assistance of counsel: They therefore offer the following resolution, to wit:

Resolved, That the prayer of the memorialists ought not to be granted, and

On motion of Mr. Conrad, seconded by Mr. Penrose, The said was read the second time, and the resolution adopted.

March 27, page 441, 442.

The bill from the Senate, entitled "An Act to settle the controversies arising from contending claims to lands within that part of the territory of this Commonwealth north and west of the Ohio and Allegheny and Conewango creek," was read the third time. Whereupon,

Resolved, That the said bill pass with the following amendments.

Section 1, line 16, between the words "*the Ohio,*" insert the word "*rivers.*"

Section 2, line 4, between the words "*the method*" insert "*common*" same line and line 5, "*to be appointed by the judges aforesaid*"

Section 4, line 10, between the words "*shall cause*" insert "*if requested*" Lines 11 and 12, strike out "*he shall write his name*" and insert in place thereof, *shall be put a certificate in the usual form*" Line 14, between the words "*applying Provided*" insert "*he or they paying therefor the usual fees*" Line 19, between the words "*of the*" insert "*and residence on*" Line 21, between the words "*taken and*" insert "*and when the land was first improved*" Line 26, strike out "*at*" where it first occurs, and in place thereof, insert the word "*of.*"

Preamble, line 6, between the words "*the Ohio*" insert the word "*rivers*" Line 17, make "*settlement*" read "*settling*" Line 58, between the words "*the Ohio*" insert "*rivers*"

Strike out the 59th line.

Title, between "*of Ohio*" insert "*the rivers*"

The bill, entitled "An Act to maintain the territorial rights of this State, and protect the property of persons holding lands under the same," was read the third time.

On the question,—*Shall this bill pass?*

The Yeas and Nays were called for by Mr. Franklin and Mr. Mitchel, and are as follow, to wit:

YEAS.

Messrs. Alexander, Follmer, A. Miller, Alter, Folwell, Mitchel, W. Anderson, Gibbons, Mohler, I. Anderson, Goodman, Jesse Moore, Barnet, Gordon, Neuhardt, Beale, Hall, Odenheimer, Blair, Heister, Penrose, Boileau, Helman, R. Porter, Brady, Henderson, Potts, Bratton Holgate, Preston, Brodhead, Ingels, Pugh, Buchannan, Kimmel, Rea, Bull Laycock, Roberts, Cooke, Ley, Rose, Conrad, Lyle, Slagle, Cunningham, M'Dowell, *(Chester.)* J. Smith, Dale, F. Smith, Davis, M'Dowell, *(Washington)* B. H. Smith, Eichelberger, Snyder, Engle, M'Elroy, Statler, Ewalt, M'Masters, Steele, Ferguson, J. Miller, Thornburgh, Trevor, Wetherill Witman, Udree, Wilson, *(Northampton and Wayne)* Weaver, *Speaker*, Wayne, Wilson, *(Daup.)* 73

NAYS.

Messrs. Franklin, Porter. 2

So it was determined in the affirmative, and

Ordered, That it be transmitted to the Senate for concurrence.

S.

Letter from the Counsel of the Holland Company to the Judges, stating their reasons for declining the jurisdiction established by the act of April 1802.

Gentlemen,

Having attentively considered the suggestions which were made yesterday during the conference at the chambers of the Chief Justice, on the subject of the act of the General Assembly, passed at the last session, with a view to settle the controversies arising from contending claims to lands north and west of the rivers Ohio and Allegany and Conewango creek, we beg briefly to submit the result as a justification for the advice that will be given to our clients.

1. Although the Holland company and their Counsel cannot approve the terms of the preamble of the act by which the Legislature has undertaken to declare the meaning and construction of the origi-

nal contract (the very point in controverſy) and though they cannot admit the right or the propriety of dictating a new and perhaps unconſtitutional mode of ſettling a judicial queſtion, without the aſſent of all the parties in intereſt; yet they feel the importance of an early deciſion, and would chearfully concur in any form of proceeding by which the merits of the caſe could be fully and fairly inveſtigated and decided.

2. The merits of the caſe on the part of the Holland Company as diſcloſed to the Supreme Court on the motion for a Mandamus and as preſented to the Legiſlature evidently involve the following conſiderations: 1. Whether the Company have complied with the condition of the 9th ſection of the act of April 1792? 2. Whether the reaſons aſſigned for a non compliance with the condition bring their caſe within the proviſo? 3. Whether the proviſo operates upon caſes that are brought within its terms, to diſcharge the condition entirely, or only to enlarge the time for performing it? 4. Whether the Company have ſo perſiſted in their endeavours to perform the condition as to be ſtill within the benefit of the proviſo. And 5. Whether the Government by preſcribing the evidence on which patents had actually iſſued in caſes brought within the proviſo, could now take advantage of the forfeiture for a ſuppoſed non compliance with the original condition?

3. But the queſtions which the Legiſlature has propoſed are the following: 1. Are warrants heretofore granted under the act of the 3d day of April 1792, valid and effectual in law againſt this Commonwealth ſo as to bar this Commonwealth from granting the ſame land to other applicants under the act aforeſaid, in caſes where the warrantees have not fully and fairly complied with the conditions of ſettlement, improvement and reſidence required by the ſaid act, at any time before the date of ſuch warrants reſpectively or within two years after? 2. Are the titles that have iſſued from the Land-office under the act aforeſaid whether by warrant or patent good and effectual in law againſt this Commonwealth or any perſon claiming under the act aforeſaid in caſes where ſuch titles have iſſued on the authority and have been grounded upon the certificates of two Juſtices of the peace uſually called "prevention certificates," without any other evidence being given of the nature, and circumſtances of ſuch prevention whereby as is alleged the conditions of ſettlement improvement and reſidence required by the ſaid act, could not be complied with? Theſe queſtions in our opinion exclude an inveſtigation and deciſion upon any other point than the following: 1. Whether if the Holland Company have not performed the condition on which the warrants originally iſſued within two years though the reſidence could not be completed till the expiration of five years, the State is barred from granting the ſame lands to other applicants? and 2d. Whether patents having iſſued on the evidence of prevention certificates alone they are not void, ſo as to authorize the ſtate to ſell the ſame land to other purchaſers.

4. On the firſt of theſe points we obſerve, that it has never been contended that the Holland Company have performed the condition within two years but only ; that the condition was diſcharged or ſuſpended by the operation of the proviſo on the facts exiſting in their caſe, particularly the fact that an Indian war exiſted for ſeveral years beyond the term of two years ſpecified in the Act of Aſſembly : And on the ſecond point it is ſufficient to ſay, that although the prevention certificate was the evidence preſcribed by the public officers, and ought therefore to be binding on the Government, yet that even waving that objection, the patentees will be deprived of their land when other ſatisfactory and legal evidence was, and is in their power, to prove the circumſtances which entitled them to patents

Without recurring to the many other obvious objections to the form and proviſions of the act of Aſſembly we are confident that the view which has been offered upon the ſubject, will juſtify our adviſing the Holland Company to decline becoming a party to the ſuit propoſed to be inſtituted ſince we repeat, a deciſion on the two abſtract queſtions propoſed by the Legiſlature would ſtill leave untouched and undecided, the great and eſſential part of the controverſy.

(Signed) J. INGERSOLL,
W. LEWIS,
A. J. DALLAS.

Philadelphia, June 24, 1802.

T.

Sunbury, Northumberland County,
26th November, 1802.

ATTORNEY-GENERAL, vs. The GRANTEES, under the Act of the 3d April, 1792 . } CHARGE of Judge YEATES to the JURY.

THAT the deciſion of the Court and Jury on the preſent feigned iſſue ſhould " ſettle the controverſies ariſing from contending claims to lands north and weſt of the rivers Ohio and Alleghany and Conewango creek," is an event devoutly to be wiſhed for by every good citizen. " It is indiſpenſably neceſſary that the peace of that part of the State ſhould be preſerved, and complete juſtice done to all parties intereſted, as effectually as poſſible." (Cloſe of Preamble to the Act of 2d April, 1802, p. 155.)

We have no heſitation in declaring, that we are not without our fears that the good intentions of the Legiſlature expreſſed in the law under which we now ſit, will not be effected. We hope we ſhall be happy enough to acknowledge our miſtake hereafter.

It is obvious that the validity of the claims of the warrant-holders, as well as of the actual ſettlers, muſt depend upon the true and correct conſtruction of the Act of the 3d April, 1792, conſidered as a ſolemn contract between the Commonwealth and each individual.

The circumſtances attendant on each particular caſe may vary the general legal concluſion in many inſtances.

We proceed to the diſcharge of the duties enjoined on us by the late Act.

The firſt queſtion propoſed to our conſideration is as follows:

Are warrants heretofore granted under the Act of the 3d of April 1792, valid and effectual in law againſt this Commonwealth, ſo as to bar this Commonwealth from granting the ſame land to other applicants under the Act aforeſaid, in caſes where the warrantees have not fully and fairly complied with the conditions of ſettlement, improvement and reſidence, required by the ſaid Act, at any time before the date of ſuch warrants reſpectively, or within two years after?

It will be proper here to obſerve, that on the motion for the Mandamus to the late Secretary of the Land-office, at the inſtance of the Holland Company—the Members of this Court, after *great* conſideration of the ſubject, were divided in their opinions. The Chief Juſtice ſeemed to be of opinion, that if a warrantee was "by force "of arms of the enemies of the United States, prevented from "making an actual ſettlement, as deſcribed in the Act, or was "driven therefrom, and ſhould *perſiſt* in his endeavours to make "ſuch actual ſettlement thereafter," it would amount to a performance of the condition in law. Two of us (Yeates and Smith) thought, that in all events, except the death of the party, the ſettlement and reſidence contemplated by the Act, ſhould precede the veſting of the complete and abſolute eſtate, and that "every war-"rant-holder ſhould cauſe a ſettlement to be made on his lands "within two years *next after* the date of the warrant, and a reſi-"dence thereon for five years *next following* the firſt ſettlement, on "pain of forfeiture, by a new warrant; but if, nevertheleſs, he "ſhould be interrupted or obſtructed by the force of the enemy "from doing thoſe acts within the limited periods, and ſhould after-"wards perſevere in his efforts in a reaſonable time after the re-"moval of ſuch force, until theſe objects ſhould be accompliſhed, "no advantage ſhall be taken of him for the want of a ſucceſſive *continuation* of his ſettlement."—To this opinion Judge Brackenridge ſubſcribes.

It would ill become us to ſay which of theſe conſtructions is entitled to a preference. It is true, that in the Preamble of the Act

of 2d April, 1802, (p. 154) it is expreſſed, that " it appears from " the Act aforeſaid, (3d of April, 1792) that the Commonwealth " regarded a full compliance with thoſe conditions of ſettlement, " improvement and reſidence, as an indiſpenſable part of the pur- " chaſe or conſideration of the land itſelf." But it is equally certain that the true teſt of title to the lands in queſtion muſt be reſolved into the legitimate meaning of the Act of 1792, extracted *ex viceribus ſuis*, independant of any Legiſlative expoſition thereof. I adhere to the opinion which I formerly delivered in Bank; yet, if a different interpretation of the law ſhall be made by Courts of a competent juriſdiction *in the dernier reſort*, I ſhall be bound to acquieſce, though I may not be able to change my ſentiments. If the meaning of the firſt queſtion be, are titles under warrants iſſued under the Law of the 3d of April, 1792, for lands north and weſt of the rivers Ohio and Alleghany and Conewango creek, good and available againſt the Commonwealth, ſo as to bar the granting of the ſame land to other applicants, where the warrantees have not fully and fairly complied with the conditions of ſettlement, improvement, and reſidence, required by the law, at any time before, or within two years after, the dates of the reſpective warrants, *in time of profound peace, when they were not prevented from making ſuch actual ſettlement by force of arms of the enemies of the United States*, or reaſonable & well-grounded fear of the enemies of the Savages?—The anſwer is ready in the language of the Acts before us, and can admit of no heſitation.

" No warrant or ſurvey for thoſe lands ſhall veſt any title, unleſs " the grantee has, prior to the date of ſuch warrant, made, or cauſed " to be made, or ſhall within the ſpace of two years next after the " date of the ſame, make, or cauſe to be made, an actual ſettle- " ment thereon, by clearing, &c. and in default thereof, it ſhall " and may be lawful to and for the Commonwealth to iſſue new " warrants to other actual ſettlers for the ſaid lands, or any part " thereof, &c." (Act of the 3d of April, 1792, Sec. 8.) For " the Commonwealth regarded a full compliance with theſe con- " ditions of ſettlement and reſidence as an indiſputable part of the " purchaſe or conſideration of the lands ſo granted." (Preamble to Act of 1802.)

But if the true meaning of the queſtion be—Whether under *all* given or ſuppoſed circumſtances of *peace* or *war*, of times of *perfect tranquility* or *imminent danger*, ſuch warrants are not *ipſo facto* void and dead in law, *we are* conſtrained to ſay, that our minds refuſe aſſent to the general affirmative of the propoſition.

We will exemplify our ideas on this ſubject.—Put the caſe, that a warrant taken out early in 1792, calls for an iſland, or deſcribes certain land, with accuracy and preciſion, by the courſe of waters, or other natural boundaries, diſtant from any military post, and that the warrantee, after evidencing the fulleſt intentions of making an actual ſettlement on the lands applied for, by all the neceſſary pre-

paration of proviſions, implements of huſbandry, labourers, cattle, &c. cannot, with any degree of perſonal ſafety, ſeat himſelf on the lands within two years after the date of the warrant, and by reaſon of the juſt terror of Savage hoſtilities?—Will not the Proviſo in the 9th Section of the Act of 3d April, 1792, excuſe the *temporary* non-performance of an Act, rendered highly dangerous, if not abſolutely impractible, by imperious circumſtances, over which he had no controul?

Or—Suppoſe another warrant, depending, in point of deſcription, on other leading warrants, which the Diſtrict Surveyor, either from the ſtate of the country, the hurry of the buſineſs of his office, or other cauſes, could not ſurvey until the two years were nearly expired, and the depredations of the Indians ſhould intervene for the reſidue of the term, will not this alſo ſuſpend the operation of the forfeiture?—Nothing can be clearer to *us*, than that the terms of the Proviſo embrace and aid ſuch caſes; and independent of the ſtrong expreſſions made uſe of, *we* ſhould require ſtrong proof to ſatisfy our minds that the Legiſlature could poſſibly mean to make a wanton ſacrifice of the lives of her citizens.

It is ſaid in the books, that conditions rendered impoſſible by the Act of God, are void. Salk. 170. 2 Co. 79. *b.* Co. Lit. 206. *a.* 290 *b.* 1 Roll. Ab. 449. *l.* 50. 1 Fonb. 199.

But *conditions precedent* muſt be ſtrictly performed to make the eſtate veſt, and though become impoſſible, even by the Act of God, the eſtate will not veſt—aliter of *conditions ſubſequent*, 12 Mod. 183. Co. Lit. 218. *a.* 2 Vern. 339. 1 Ch. Ca. 129. 138. Salk. 231. 1 Vern. 183. 4 Mod. 66.—*We* deſire to be underſtood to mean, that the "Prevention by force of arms of the enemies of the United States," does not, in *our* idea, abſolutely diſpenſe with and annul the conditions of actual ſettlement, improvement and reſidence, but that it *ſuſpends* the forfeiture by protracting the limited periods—Still the conditions muſt be performed *cy pres*, whenever the real terror ariſing from the enemy has ſubſided, and he ſhall honeſtly perſiſt in his endeavours to make ſuch actual ſettlement, improvement and reſidence, until the conditions are fairly and fully complied with.

Other inſtances may be ſuppoſed, wherein the principles of prevention may effectually be applicable. If a perſon, under the pretence of being an actual ſettler, ſhall ſeat himſelf on lands previouſly warranted and ſurveyed within the period allowed, under a fair conſtruction of the law, to the warrantee, for the making his ſettlement, withhold the poſſeſſion, and obſtruct him from making his ſettlement, he ſhall derive no benefit from this unlawful act. If the party himſelf is the cauſe, wherefore the condition cannot be performed, he ſhall never take advantage. Co. Lit. 206. Doug. 661. 1 Roll. Ab. 454, pl. 8. Godb. 76. 5 Vin. 246, pl. 25.

We truſt that *we* have ſaid enough to convey *our* ſentiments on the firſt point. Our anſwer to the queſtion, as propoſed, is, that ſuch warrants may or may not be valid and effectual in law againſt the Commonwealth, according to the ſeveral times and exiſting facts accompanying ſuch warrants. The reſult of *our* opinion, founded on our beſt conſideration of the matter is, that every caſe muſt depend on, and be governed by its own peculiar circumſtances.

The ſecond queſtion for deciſion is—Are the titles that have iſſued from the Land-office under the Act aforeſaid, whether by warrant or patent, good and effectual againſt the Commonwealth, or any perſon claiming under the Act aforeſaid, in caſes where ſuch titles have iſſued on the authority, and have been grounded on the certificates of two Juſtices of the Peace, uſually called Prevention Certificates, without any other evidence being given of the nature and circumſtances of ſuch prevention, whereby, as is alledged, the conditions of ſettlement, improvement and reſidence, required by the ſaid Act, could not be complied with?

It was ſtated in evidence on the motion, for the Mandamus, and proved on this trial, that the Board of Property being deſirous of ſettling a formal mode of certificate on which patents might iſſue for lands north and weſt of the rivers Ohio and Alleghany and Conewango creek, required the opinion of Mr. Ingerſoll, the then Attorney-General thereon; on due conſideration, a form was afterwards adopted on the 21ſt of December, 1797, which was ordered to be publiſhed in the Pittſburgh Gazette, and patents iſſued of courſe, on the preſcribed form being complied with.

The received opinion of the Supreme Executive Magiſtrate, the Attorney-General, the Board of Property, and of a reſpectable part of the Bar, (whoſe ſentiments on legal queſtions will always have great and deſerved weight) at that day, certainly was, that if a warrant-holder was prevented by force of arms of the enemies of the United States from making his actual ſettlement, within two years after the date of his warrant, and afterwards perſiſted in his endeavours to make ſuch ſettlement, that the condition was extinguiſhed and gone.—*Perſiſting in endeavours*, was conſtrued to mean ſomething—Attempts, Eſſays, &c.—but that did not imply abſolute ſucceſs, or accompliſhment of the objects intended to be effected. By ſome it was thought, that the endeavours were only to be *commenſurate as to the time* of making the actual ſettlement, and were tantamount, and ſhould avail the parties "in the ſame manner as if the actual ſettlements had been made and continued."

The deciſions of the Court in Morris's Leſſee vs. Neighman and others at Pittſburg May 1799, tended to make the former opinion queſtionable; and two of the juſtices of the Supreme Court adopted

a different doctrine, in their judgment between the Holland Company and Tench Cox.

In the argument in that case, it was insisted by the Counsel for the plaintiffs that the Board of Property in their resolves and the Governor by his patent represented the Commonwealth pro hac vice; and that interests vested under them which could not afterwards be defeated.

We cannot subscribe hereto. If the conditions of settlement, improvement and residence are indispensible at all events; they become so by an act of the different branches of the Legislature. The governor who has a qualified negative in the passing of laws, cannot *dispense* with their injunctions, it cannot be said that this case falls within the meaning of the 9th section of the second article of the constitution. "The governor shall have power to remit fines and "forfeitures and grant reprieves and pardons except in case of im-"peachment." It relates merely to penalties consequent on public offences, nor can it be pretended that the Board of Property, by any act whatever of their own, can derogate from the binding force of law. But the fact is, an intention of dispensing with the law of 1792 cannot with any degree of justice be ascribed to the Governor or Board of Property for the time being. They considered themselves in their different functions virtually discharging their respective duties in carrying the act into execution according to the general received opinion of the day; they never intended to purge a forfeiture if it had really accrued, nor to excuse the non-performance of a condition if it had not been complied with; agreeably to the public will expressed in a legislative contract.

The rule of law is thus laid down in England. A false or partial suggestion by the grantee of the King *to the Kings prejudice;* whereby he is deceived will make the grant of the King void. Hob. 229. Cro. E. 632. Yel. 48. 1. Co. 44. *a.* 51. *b.* 3. Leon. 5. 2. Hawk 398. Black 226. But where the words, are the words of the King and it appears *that he has only mistaken the law, there he shall not be said to be so deceived to the* avoidance of the grant per Sir Samuel Eyre; Just. Ld. Ray 50. 6 Co. 55. b.—6 b accord. But if any of the lands concerning which the question arises, become forfeited by the omission of certain acts enjoined on the warrant holders, they do not escheat to the Governor for the time being, for his benefit, nor can he be prejudiced as Governor by any grant thereof, they become vested in the whole body of the Citizens as the property of the Commonwealth subject to the disposition of the laws,

We are decidedly of opinion, that the patents, and the prevention certificates recited in the patents, are not conclusive against this Commonwealth, or any person claiming under the Act of 3d of April, 1792, of the patentees having performed the conditions enjoined on them, although they have pursued the form prescribed by the Land-officers. But we also think that the circumstance

of recital of such certificates will not *ipso facto* avoid and nullify the patent, if the actual settlement, improvement and residence, pointed out by the law, can be established by other proof.

We must repeat on this head, what we asserted on the former, that every case must be governed by its own peculiar circumstances. Until the facts really existing, as to each tract of land, are ascertained with accuracy, the legal conclusion cannot be drawn with any degree of correctness. *Ex facto oritur jus.*

2. Here we feel ourselves irresistably impelled to mention a difficulty which strikes our minds forcibly. *Our* reflections on the subject have led us to ask ourselves this question on our pillows.—What would a wise, just and independent Chancellor decree on the last question?—Executory contracts are the peculiar objects of Chancery Jurisdiction, and can be specifically enforced by Chancery alone—Equity forms a part of our law, says the late Chief Justice truly. 1 Dall. 213.

If it had appeared to such a Chancellor, by the pleadings or other proofs, that the purchase money had been fully paid to the Government by the individual for a tract of land under the law of the 3d April, 1792. That times of difficulty and danger had intervened —that sums of money had been expended to effect an actual settlement, improvement and residence, which had not been accomplished fully—that by means of an unintentional *mistake* on the part of the State-officers in granting him his patent—not led to that mistake by any species of fraud or deception on the part of the grantee—he had been *led into an error* and *lulled into a confidence* that the conditions of the grant had been *legally* complied with, and therefore he had remitted in his endeavours therein:—Would not he think, that under all these circumstances, thus combined, equity would interpose and mitigate the rigid law of forfeiture, by protracting the limited periods? And would it not be an additional ground of equity, that the political state of the country has materially changed since 1792, by a surrender of the western ports to the Government of the United States, and peace with the Indian nations, both which render an immediate settlement of the frontiers, in some measure, less necessary than heretofore?

But it is not submitted to us to draw the line of property to these lands; they must be left to the cool and temperate decisions of others, before whom the questions of title may be agitated—We are confined to the wager on the matters before us, and on both questions *we* have given you *our* dispassionate sentiments, formed on due reflection, according to the best of our judgment—We are interested merely as common citizens, whose safety and happiness is involved in a due administration of the laws. We profess and feel an ardent desire that peace and tranquility should be preserved to the most remote inhabitants of this Commonwealth.

U.

To the Senate and Houſe of Repreſentatives of the Commonwealth of Pennſylvania.

Gentlemen,

THE Secretary will deliver to the reſpective Houſes, copies of the letter to me from the Honorable the Juſtices of the Supreme Court of this State, accompanied with copies of the proceedings, verdict, and judgment in a ſpecial court, held before them, at Sunbury, in the county of Northumberland, in purſuance of an act of the General Aſſembly, ch. 75, paſſed the ſecond day of April laſt; at which court the attorney general and two other gentlemen, learned in the law, attended as counſel in behalf of the Commonwealth.

I alſo ſubmit to your conſideration the ſubject matter of a letter which I have received from general William Irwine, ſuperintendant of military ſtores of the United States, reſpecting an aſſeſſment of the arſenal on the Schuylkill, near the city of Philadelphia, the property of the United States, I believe it has not been uſual to tax ſuch property in any of the ſtates, but it reſts with the Legiſlature to decide thereon.

At the ſame time, I have deemed it adviſeable to lay before you, copies of two letters, one from a Mr. Eliſha Tracy, of Norwich, in the ſtate of Connecticut, to Mr. Henry Drinker of Philadelphia; the other from John Franklin Eſq. a member of the Houſe of Repreſentatives, and a certain Samuel Avery, to the committee of Pennſylvania, Land-holders. The writers of theſe letters would appear to ſet the laws and government of Pennſylvania at nought, but, as the laws againſt intruſions are conſtitutional and ſalutary, be aſſured they ſhall be faithfully and promptly executed.

THOMAS M'KEAN.

Lancaſter, January 4, 1803.

Philadelphia, Dec. 18, 1802.

SIR,

We have the honor to incloſe to your Excellency, the proceedings, verdict, and judgment in the late ſpecial court held before us at Sunbury, in purſuance of the act of 2d of April, 1802.

And are with great reſpect and conſideration,

Your Excellency's moſt obedient humble ſervant,

J. YEATES,
THOMAS SMITH,
H. H. BRACKENRIDGE.

Excellency, Gov. M'Kean.

PENNSYLVANIA, ſſ.

WHEREAS, the judges of the Supreme Court of Pennſylvania, or a majority of them are required by an act of Aſſembly paſſed the ſecond day of April laſt, to meet together and deviſe ſome method either by means of a feigned iſſue or otherwiſe, to bring before a court and jury for their determination certain queſtions reſpecting the claims to lands within that part of the territory of this State north and weſt of the rivers Ohio and Alleghany and Conewango creek.

In purſuance of which requiſition a majority of the ſaid judges, have this day met together for the purpoſe aforeſaid. And do direct that an action be entered on the records of the Supreme Court, wherein the Attorney General ſhall be plaintiff, and the grantees under the act of the third of April, one thouſand ſeven hundred and ninety-two, ſhall be defendants, and that a declaration be filed by the Attorney General againſt the defendants as on a wager, embracing the queſtions propoſed by the ſaid act of Aſſembly of 1802, to which declaration he ſhall enter the pleas of non aſſumpſit and payment, with leave to give the ſpecial matters in evidence, and likewiſe enter the proper replication and join the iſſues.

And that any perſon or perſons claiming as a ſettler or ſettlers under the ſaid act of April 1792, and alledging that his or their claim may be effected by any warrant, patent or grant, made or iſſued in purſuance of the ſame act, ſhall be admitted to become a party to the ſaid ſuit on the part of the plaintiff, and that any perſon or perſons claiming as grantee or grantees under the ſaid act, and alledging that his or their grant may be effected by a ſettler, ſhall he admitted to become a party or parties on the part of the defendants.

And the ſaid judges, do further direct that a precept in the nature of a venire facias ſhall be iſſued by the Prothonotary of the Supreme Court directed to the ſheriff of the county of Northumberland, requiring him to ſummon the uſual number of diſintereſted perſons inhabitants of the counties of Northumberland or Lycoming, to appear at the Court Houſe of the town of Sunbury in the ſaid county of Northumberland on the twenty-fifth day of November next, at ten o'clock in the forenoon, to make a jury of the country to try the iſſue or iſſues directed by the firſt above recited act of Aſſembly to be there tried.

And the ſaid judges do further direct that a ſubpœna ſhall iſſue from the office of the Prothonotary of the Supreme Court to the ſecretary of the Land Office, to appear and attend at the ſaid trial, bringing with him all ſuch books, papers and documents as he ſhall think material to be produced and conſulted thereat.

And that other ſubpœnas may likewiſe be iſſued by the ſaid Prothonotary, or by the clerk of the Circuit Court of the county of Northumberland, or by any other clerk of any other circuit court with-

in this ſtate, for all, or any witneſſes that he or they may be required to iſſue by any perſon or perſons, propoſing to become a party or parties to the ſaid ſuit.

And the ſaid Judges do likewiſe think it expedient that the Governor of this Commonwealth ſhall give public notice by his proclamation, that all perſons whom it may concern, either as parties or witneſſes may appear at the time and place aforeſaid, to make their claims or take defence as parties, or to give evidence as witneſſes on the trial aforeſaid.

All which we certify to his excellency the Governor, in purſuance of the directions of the ſaid act of Aſſembly, this twenty-fifth day of June, A. D. 1802.

EDWARD SHIPPEN,
THOMAS SMITH,
H. H. BRACKENRIDGE,

PLEAS before the honourable Edward Shippen, Eſquire, Doctor of Laws Chief Juſtice and the honourable Jaſper Yeates, Thomas Smith and H. H. Brackenridge, Eſquires, judges of the Supreme Court of Pennſylvania.

In the Supreme Court of Pennſylvania in the year of our Lord, 1802.

PENNSYLVANIA, *ſſ.*

THE grantees of lands laying north and weſt of the rivers Ohio and Alleghany and Conewango creek in the ſtate of Pennſylvania under an act of Aſſembly of the ſaid ſtate paſſed on the 3d day of April, in the year of our Lord 1792, entitled "An act for the ſale of the vacant lands within this Commonwealth" were attached to anſwer the Attorney General of the ſaid ſtate of a plea of treſpaſs on the caſe, &c.

And Whereupon the ſaid Attorney General in his proper perſon complains, that whereas on the ſecond day of April in the year of our Lord 1802, at Philadelphia in the county of Philadelphia in the Commonwealth of Pennſylvania aforeſaid, a certain diſcourſe was had and moved between the ſaid Attorney General and the ſaid grantees of and concerning the lands within the ſaid Commonwealth laying north and weſt of the rivers Ohio and Alleghany and Conewango creek, and of and concerning the titles to thoſe lands in which diſcourſe, the ſaid Attorney General aſſerted and affirmed that warrants theretofore granted under the ſaid act of the third of April 1792, were not valid and effectual in law againſt the Commonwealth of Pennſylvania ſo as to bar the ſaid Commonwealth from granting the ſame land to other applicants, under the ſaid act in caſes where

the warrantees have not fully and fairly complied with the conditions of ſettlement, improvement and reſidence required by the ſaid act, at any time before the date of ſuch warrants reſpectively, or within two years after :—and alſo that the titles that had iſſued from the land office, under the act aforeſaid, whether by warrant or patent were not good and effectual in law againſt the ſaid Commonwealth, or any perſon claiming under the act aforeſaid, in caſes where ſuch titles have iſſued on the authority, and have been grounded on the certificates of two juſtices of the peace, uſually called "prevention certificates" without any other evidence being given of the nature and circumſtances of ſuch prevention, whereby the conditions of ſettlement, improvement and reſidence required by the ſaid act could not be complied with.

And thereupon, the ſaid grantees in conſideration of fifty dollars to them in hand by the ſaid Attorney General before that time, paid aſſumed upon themſelves, and to the ſaid Attorney General, then and there faithfully promiſed that they the ſaid grantees would pay to the ſaid Attorney General two hundred dollars, if warrants theretofore granted under the ſaid act of the third day of April 1792, were not valid and effectual in law againſt the ſaid Commonwealth, ſo as to bar the ſaid Commonwealth from granting the ſaid land to other applicants under the act aforeſaid, in caſes where the warrantees have not fully and fairly complied with the conditions of ſettlement, improvement and reſidence required by the ſaid act at any time before the date of ſuch warrants reſpectively, or within two years after. And if the titles that had iſſued from the land office under the act aforeſaid, whether by warrant or patent were not good and effectual in law againſt the ſaid Commonwealth, or any perſon claiming under the act aforeſaid, where ſuch titles have iſſued on the authority, and been grounded on the certificates of two juſtices of the peace, uſually called "prevention certificates" without any other evidence being given of the nature and circumſtances of ſuch prevention whereby (as is alledged) the conditions of ſettlement, improvement and reſidence required by the ſaid act, could not be complied with.

And the ſaid Attorney General in fact ſaith that warrants theretofore granted under the ſaid act of the third of April, one thouſand ſeven hundred and ninety-two, are not valid and effectual in law, againſt the ſaid Commonwealth ſo as to bar the ſaid Commonwealth from granting the ſame land to other applicants under the act aforeſaid, in caſes where warrantees have not fully and fairly complied with the conditions of ſettlement, improvement and reſidence required by the ſaid act at any time before the date of ſuch warrant reſpectively, or within two years after. And alſo that the titles that have iſſued from the land office under the act aforeſaid, whether by warrant or patent are not good and effectual in law, againſt the ſaid Commonwealth, or any perſon claiming under the act aforeſaid, in caſes where ſuch titles have iſſued on the authority and have been grounded upon the certifi-

cates of two juſtices of the peace, uſually called "prevention certificates" without any other evidence being given of the nature and circumſtances of ſuch prevention, whereby (as is alledged) the conditions of ſettlement, improvement and reſidence required by the ſaid act, could not be complied with.

By reaſon of which premiſes, he the ſaid Attorney General hath become entitled to receive of the ſaid grantees and action, hath accrued to him to demand and have of them the ſaid ſum of two hundred dollars according to their promiſe and undertaking aforeſaid.

Nevertheleſs the ſaid grantees, their promiſe and undertaking aforeſaid, in form aforeſaid, made not at all regarding but contriving, and unjuſtly intending the ſaid Attorney General in this behalf to deceive the ſaid two hundred dollars to the ſaid Attorney General have not yet paid, nor him for the ſame in any wiſe contented but the ſame to him to pay or in any wiſe therefor to content they the ſaid grantees hitherto have altogether refuſed to his damage of three hundred dollars, and therefore he produceth ſuit, &c.

The Attorney General in his proper perſon. } Pledges of Pros. { J. DOE, R. ROE.

The Attorney General by direction of the ſaid judges pleads non aſſumpſit and payment, with leave to give the ſpecial matters in evidence, and alſo by direction of the ſaid judges replies non ſolvit and iſſues.

J. B. M'KEAN.

Thereupon let a jury come of good lawful and diſintereſted men, inhabitants of the counties of Northumberland or Lycoming, at the Court Houſe at Sunbury, in the county of Northumberland on the ſaid twenty-fifth day of November, before the ſaid judges, or a majority of them who neither &c. to recognise, &c. the ſame day is given to the parties aforeſaid, &c. on which ſame twenty-fifth day of November, came the Attorney General aforeſaid, but the grantees of lands laying north and weſt of the rivers Ohio and Alleghany and Conewango creek, under an act of Aſſembly of the ſaid ſtate, paſſed on the third day of April, in the year of our Lord 1792, entitled "An act for the ſale of the vacant lands within this Commonwealth" did not come before the honourable Jaſper Yeates, Thomas Smith and H. H. Brackenridge, Eſquires, a majority of the ſaid judges of the ſaid Supreme Court, and a jury being thereupon called, come to wit, John Fitſworth, Eſquire, John Frick, Chriſtopher Probſt, John Frazier, Charles Drum, Thomas Hamilton, James Laird, Eſquire, George Langs, William M'Adams, William Mears Eſquire, Robert Montgomery, Eſquire and William Dickſon, good lawful and diſintereſted men of the counties of Northumberland or Lycoming aforeſaid, who being duly empannelled, returned, tried, elected and ſworn upon their oaths, do ſay that the ſaid grantees did aſſume to the ſaid Attorney General in manner and form as the ſaid Attorney General

in his declaration aforeſaid, has alledged, and that the ſame grantees, or either of them, did not pay to the ſaid Attorney General the ſaid ſum of two hundred dollars, or any part thereof, as the ſame grantees in their plea aforeſaid, have alledged, and they aſſeſs the nominal damages of the ſaid Attorney General by reaſon of the non-performance by the ſaid grantees of their promiſe and aſſumption aforeſaid to two hundred dollars, beſides his coſts and charges by him about his ſuit in that behalf expended and for thoſe coſts and charges to ſix cents. *Whereupon* it is conſidered by the court here, that the ſaid Attorney General do recover of the ſaid grantees his damages, coſts, and charges aforeſaid, amounting in the whole to two hundred dollars and ſix cents, and the court accordingly render judgment thereon, for the plaintiff *ſubject to the proviſo in the ninth ſection* of the act of Aſſembly, paſſed the third day of April 1792.

I EDWARD BURD, Prothonotory of the Supreme Court aforeſaid, hereby certify that the foregoing is a true copy of the order of the judges of the ſaid Supreme Court, agreeably to an act of Aſſembly therein referred to, paſſed the ſecond day of April laſt, and of the record of the pleadings, trial verdict of the jury and judgment of the ſaid court, had in purſuance thereof, as the ſame remain of record in the ſaid court.

(L. S.) In witneſs whereof, I have hereunto ſet my hand and affixed the ſeal of the ſaid Supreme Court at Philadelphia, the eighteenth day of December, in the year of our Lord 1802.

EDWARD BURD, Prot.

I CERTIFY that the foregoing contained in fourteen pages are true copies of the papers correſponding thereto as communicated to the Senate of the Commonwealth of Pennſylvania by the Governor thereof on the ſixth day of January one thouſand eight hundred and three.

GEORGE BRYAN, Clk.
of the Senate.

W.

Extracts from the Journals of the Senate.

Wedneſday, February 9, 1803, p. 218.

MR. FINDLEY called for the Governor's Meſſage, together with the Proceedings, Verdict and Judgment, in the late Spe-

cial Court, held at Sunbury, in purſuance of the Act of the 2d of April, 1802, read on the 6th ult. and the ſame were again read.

Whereupon,

On motion of Mr. Findley, ſeconded by Mr. M'Arthur,

Reſolved, That the Proceedings, Verdict and Judgment, in the late Special Court, held before the Judges of the Supreme Court, at Sunbury, in purſuance of the Act of the 2d of April, 1802, be referred to a Select Committee, with inſtructions to report thereon by bill or otherwiſe.

Ordered, That Mr. Findley, Mr. Kean, Mr. Pearſon, Mr. Steele and Mr. M'Arthur, be the Committee for that purpoſe.

Thurſday, February 17, 1803, p. 258.

Mr. Findley, from the Committee to whom was referred on the 9th inſtant, that part of the Governor's Meſſage reſpecting the Proceedings of the Special Court, held at Sunbury, under the Act of the 2d of April, 1802, read the 6th of January laſt, together with the Documents connected with the ſubject,

Reported the Bill, entitled "An Act for aſcertaining the rights and claims of actual ſettlers, and others, under the Act, entitled "An Act for the ſale of the vacant lands within this Commonwealth, paſſed the 3d of April, 1792," and the ſame was read the firſt time.

No. 62.

An ACT for aſcertaining the Rights and Claims of actual Settlers, and others, under the Act, entitled "An Act for the Sale of the vacant Lands within this Commonwealth," paſſed the third of April, one thouſand ſeven hundred and ninety-two.

WHEREAS, the General Aſſembly of the Commonwealth of Pennſylvania, by an act, entitled "An Act to ſettle the controverſies ariſing from contending claims to lands within that part of the territory of this Commonwealth, north and weſt of the rivers Ohio and Alleghany and Conewango creek," paſſed the third day of April, one thouſand ſeven hundred and ninety-two, did enact as follows, to wit: "That at ſome time and place, not exceeding three months from the firſt day of the month of April, in the preſent year, as ſhall be moſt convenient to the Judges of the Supreme Court of this Commonwealth, or the majority of them, it ſhall be the duty

of the ſaid Judges, and they are hereby enjoined and required to meet together and deviſe ſome method, either by a feigned iſſue or otherwiſe, as in their judgment ſhall ſeem beſt of bringing before a Court and Jury, to be holden as hereinafter is directed, the following queſtions, reſpecting the claims to lands within that part of the territory of this State north and weſt of the rivers Ohio and Alleghany and Conewango creek, viz. Are warrants heretofore granted under the act of the third day of April, one thouſand ſeven hundred and ninety-two, valid and effectual in law againſt this Commonwealth, ſo as to bar this Commonwealth from granting the ſame land to other applicants under the act aforeſaid, in caſes where the warrantees have not fully and fairly complied with the conditions of ſettlement, improvement and reſidence, required by the ſaid act, at any time before the date of ſuch warrants reſpectively, or within two years after? Are the titles that have iſſued from the Land-office under the act aforeſaid, whether by warrant or patent good and effectual in law againſt this Commonwealth, or any perſon claiming under the act aforeſaid, in caſes where ſuch titles have been iſſued on the authority, and have been grounded upon the certificate of two Juſtices of the Peace, uſually called Prevention Certificates, without any other evidence being given of the nature and circumſtances of ſuch prevention, whereby, as is alledged, the conditions of ſettlement, improvement and reſidence, required by the ſaid act, could not be complied with? *And whereas*, the Judges of the Supreme Court of this Commonwealth, in conformity to the ſaid act, did meet and deviſe a form of action to bring the aforeſaid queſtions before the ſaid Court and Jury, and did appoint a day for the trial and determination thereof, and did direct the neceſſary proceſs to iſſue, returnable at the Court-houſe in Sunbury, in the county of Northumberland, on the twenty-fifth day of November, one thouſand eight hundred and two, at ten o'clock in the forenoon of the ſaid day, all which is certified to the Governor of this Commonwealth, under the hands of the ſaid Judges, in the following words, to wit: "All which we certify to his Excellency the Governor, in purſuance of the directions of the ſaid Act of Aſſembly, this twenty-fifth day of June, Anno Domini, one thouſand eight hundred and two.

EDWARD SHIPPEN,
THOMAS SMITH,
H. H. BRACKENRIDGE."

And whereas the Governor, under his hand and the ſeal of the Commonwealth, by his Proclamation, bearing date the twenty-ninth day of July, one thouſand eight hundred and two, did publiſh the form of proceeding deviſed by the ſaid Judges, and the time by them fixed to bring the aforeſaid queſtions to iſſue and trial, and did give due public notice to all parties and perſons intereſted in the ſaid queſtions, of the time, place and manner in which the ſaid trial would be

had and conducted: *And whereas*, the ſaid Judges, among other things, had ordered and directed that "any perſon or perſons claiming as a ſettler or ſettlers under the ſaid Act of April, one thouſand ſeven hundred and ninety-two, and alledging that his or their claim may be affected by any warrant, patent or grant, made or iſſued in purſuance of the ſame act, ſhall be admitted to become a party to the ſaid ſuit on the part of the plaintiff; and that any perſon or perſons, claiming as grantee or grantees, under the ſaid act, and alledging that his or their grant may be affected by a ſettler, ſhall be admitted to become a party or parties on the part of the defendant:" *And whereas*, on the ſaid twenty-fifth day of November, one thouſand eight hundred and two, at the Court-houſe in Sunbury, in the county of Northumberland aforeſaid, the Supreme Court of this Commonwealth, being opened in due form, and then and there being perſonally preſent, the honourable Jaſper Yeates, Thomas Smith, and H. H. Brackenridge, Judges of the ſaid Court, to which Court the Sheriff of the county of Northumberland aforeſaid, in purſuance of the precept directed to be iſſued by the Judges of the Supreme Court aforeſaid, had cauſed to come twelve good, lawful and diſintereſted men, as Jurors to the ſaid Court, to wit: John Tietſworth, Eſquire, John Frick, Chriſtopher Probſt, John Frazer, Charles Dunn, Thomas Hamilton, James Land, Eſquire, George Langs, William M'Adams, William Meares, Eſquire, Robert Montgomery, Eſquire, and William Dickſon, good, lawful and diſintereſted men, of the counties of Northumberland and Lycoming aforeſaid, who being duly impannelled and ſworn, upon their oaths reſpectively, did find for the plaintiffs, with coſts, &c. upon both the queſtions then and there ſubmitted to their determination as aforeſaid: *And whereas, by the ſaid verdict of the ſaid Jury, and the judgment of the Court thereon, a general principle is eſtabliſhed*, with reſpect to the validity of all grants in that part of the State, *whether claimed under warrants or patents, where the grantees have not fully and fairly complied with the proviſions of the Act of General Aſſembly of Pennſylvania*, entitled "An Act for the ſale of the vacant lands within this Commonwealth," paſſed the third day of April, one thouſand ſeven hundred and ninety-two, *as between the different Land Companies and others claiming lands under ſuch grants and the Commonwealth, and between the ſaid Companies and other individuals, claiming ſuch grants, againſt the actual ſettlers claiming under the act aforeſaid: And whereas*, it is the duty and the intereſt of this Commonwealth to ſee that complete and ample juſtice is adminiſtered to all her citizens, and that all who acknowledge allegiance to the Government may receive its protection: *And whereas*, attempts have been made to draw this controverſy improperly before the Federal Courts of the United States, and it hath become neceſſary for the Legiſlature of this Commonwealth to declare, that the ſecond article of the Conſtitution of the United States, giving

jurisdiction to the Federal Courts of the Union, in cases between foreigners and citizens, and between the citizens of one State and any other independent State, was not originally meant, and ought not to be construed, so as to interfere with the local regulations, internal policy, and mode of settling and disposing of the territory exclusively, belonging to each State respectively, in respect whereof, each State is and ought to be sovereign and independent: that the regulations respecting the grant, sale, settlement, and disposal of lands within each State exclusively, belonging to the State having the right of soil, territory, and jurisdiction over such lands: those regulations depending, for the most part, as in the present case, on local circumstances and situation, impossible to be known and felt so clearly and distinctly by judges coming from distant parts of the Union, and hearing for a few hours the technical arguments of professional men, as by the Legislature of the State in question, interested in promoting the public peace and prosperity, long and anxiously deliberating on the subject, and deciding at length on personal knowledge, and on a mass of evidence and argument, impossible, in most cases, for a mere Court of Law to obtain or comprehend: that if the Courts of the United States may arrogate the right of dictating to any individual State, in what manner, or on what terms she shall dispose of her property to her own citizens, or to others, from that moment such State will cease to be an independent member of the Union; for in what respect can a State be independent, if she be not so in the disposal and settlement of her own lands: that questions of rational policy are objects of Legislative decision, while the technical construction of laws is the proper province of courts of law; but if under pretence of construing a law, a set of Judges remotely connected with the state of Pennsylvania and ignorant of her local interests can set aside the decisions of our Legislature on questions of national policy confined to this Commonwealth and dependant on the local interests and situation, then will the Legislature of this State be subject and subservient to the Federal Courts of the United States on points of internal and national policy, never contemplated to be submitted to their jurisdiction. That the reference of the questions herein before stated, or of the controversy whereunto they relate to the jurisdiction of the Federal Courts by the persons, parties, or any of them, who might have appeared at the Court held at Sunbury on the twenty-fifth day of November one thousand eight hundred and two, as defendants in the suit, then and there tried and determined as aforesaid, is an indecent, contemptuous and unfair proceeding on the part of such persons and parties as have so appealed to the Federal Jurisdiction, inasmuch as the interference of the Legislature of Pennsylvania in appointing and directing the judges of the Supreme Court so to meet at Sunbury as aforesaid, was had and made in consequence of the pressing solicitations of all parties interested in this controversy as well of the Holland and Population Companies as of

the actual settlers manifested by their repeated petitions and representations to this purpose and praying for the interference of the Legislature of this Commonwealth in the settlement of the dispute between them respecting the lands aforesaid. That so far as this State is substantially implicated in interest, the attempt to draw this controversy into the Federal Courts is an attempt under cover of legal and technical forms to contravene the last amendment to the Constitution of the United States which declares, that "The judicial power of the United States shall not be construed to extend to any suit in law, or equity, commenced or prosecuted, against any one of the United States by citizens of another State or by citizens or subjects of any foreign State." That notwithstanding the Legislature of this Commonwealth entertains all due reverence and respect for the character and conduct of the Federal Courts and the Judges thereof, and has no doubts whatever, but the decision of those Courts on the present question would be conformable to the just rights and pretensions of Pennsylvania, yet, ought not the Legislature of this Commonwealth to permit unnoticed any question to be agitated in those Courts substantially foreign to their proper jurisdiction and materially and improperly affecting the rights of this sovereign and independent State: *And whereas*, the Legislature of this Commonwealth has given unequivocal proofs of its desire of doing complete and impartial justice to all parties and persons interested, by restoring in the first instance to the judiciary to establish with the aid of an impartial jury principles whereon the Legislature might safely act and by recurring to known tribunals selected under every precaution that could take away the probability or suspicion of bias on either side and called together as speedily as justice would permit, when this was rendered evidently necessary to put an end to litigations that were likely to endanger the peace and repose of the State and prevent the effectual settlement of a most important frontier, when all this was done at the earnest and repeated solicitations of the parties concerned and mutually opposed in interest. Therefore, this Commonwealth ought not and will not permit any of those rights essentially connected with her independence to be brought in question or trifled with by any person or party whatever, and particularly by any person or party connected with, or concerned in the dispute respecting the lands in question to be litigated and decided on without reprehension by or before any tribunal unacquainted with her local interests and policy. And for the purpose of preventing any citizens of this Commonwealth from being accessary thereto.

Section I. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same*, That the Governor be and he is hereby authorised and required forthwith to issue his proclamation forbidding all persons who acknowledge allegiance to this Commonwealth and who are actual settlers in that part of the territory of this

Commonwealth ſituate north and weſt of the rivers Ohio and Alleghany and Conewango creek or within what is commonly called the Triangle, and who has taken poſſeſſion of, and claims any land within the territory aforeſaid, under the act of the General Aſſembly of this Commonwealth, intituled "An act for the ſale of the vacant lands within this Commonwealth," paſſed the third day of April one thouſand ſeven hundred and ninety-two from anſwering to or appearing to anſwer to any declaration in ejectment iſſued or to iſſue out of any Federal Court for the recovery of any lands within that part of the territory of this Commonwealth herein before deſcribed.

Section II. *Be it further enacted by the authority aforeſaid.* That in order to do complete juſtice to all deſcriptions of parties intereſted in any claim to land in that part of the territory of this Commonwealth before deſcribed either as a warrant holder, or as an actual ſettler, or as improver having commenced an improvement and been prevented from continuing or perſiſting therein, or having voluntarily abandoned the ſame, the Governor be, and he is hereby authoriſed to appoint three commiſſioners whoſe duty it ſhall be to proceed as ſoon as poſſible to that country and examine the actual ſtate thereof with reſpect to all grants iſſued from the Land-office of this State, and the ſurveys made in purſuance of ſuch grants and to aſcertain whether the warrants have been executed on the lands they deſcribe and whether regular ſurveys have been marked in the field before returns were filed in the ſurveyor general's office and the nature and extent of the improvements made by the perſons who claim as actual ſettlers in their own right under the act aforeſaid, and where any perſon has contracted to improve any land for another the nature and extent of ſuch contract and whether the parties at the time of making ſuch contract were in a capacity to fulfil the ſame.

Sec. III. *Be it further enacted by the authority aforeſaid,* That the ſaid commiſſioners ſhall have power to iſſue proceſs for the purpoſe of bringing before them perſons, books and papers, and to examine witneſſes on oath or affirmation, and to do and perform all matters that may be neceſſary and proper to enable them to aſcertain and report a correct ſtatement of the actual ſtate and circumſtances of that part of the country to the board of property to enable the ſaid board to judge with propriety to whom titles ought in equity to iſſue, *And whereas,* that part within the above mentioned bounds commonly called the Triangle, was purchaſed from the United States at the rate of ſeventy-five cents per acre, as by the reſolution of congreſs of the ſixth of June one thouſand ſeven hundred and eighty-eight and the deed in purſuance thereof executed the third day of March one thouſand ſeven hundred and ninety-two and recorded in the office for recording deeds in the city and county of Philadelphia in deed-book number thirty-one, page one hundred and ſeven will fully appear, *And whereas,* the General Aſſembly in their act of the third day of April one thouſand ſeven hundred and ninety-two, did re-

" gard a full compliance with thoſe conditions of ſettlement, improvement and reſidence as an indiſpenſible part of the purchaſe or conſideration of the lands ſo granted," *And whereas*, the General Aſſembly have at this time reaſon to believe that in many inſtances both the companies and individuals have failed in performing their parts of the contract, in not having made, or cauſed to be made, the improvement and reſidence or cauſing a family to reſide on each tract as is preſcribed and required in the act aforeſaid and by their failing in performance of this condition precedent have defeated their own claim ſo that no title can veſt in them under the grants aforeſaid, agreeable to the verdict of the jury and the deciſion of the Supreme Court hereon at Sunbury aforeſaid; Yet the General Aſſembly of this Commonwealth being unwilling to eſtabliſh any general rule that would operate hardly on individuals who have paid their money into the ſtate treaſury, are deſirous ſo far as their duty to their conſtituents will permit to adopt a principle of compromiſe favorable to the perſons who have thus paid the pecuniary part of the conſideration for the land.

Sec. IV. *Be it therefore enacted by the authority aforeſaid*, That the ſaid commiſſioners ſhall make diligent enquiry reſpecting all and every tract of land, either in the Triangle or within that part of the territory of this Commonwealth ſituate north and weſt of the rivers Ohio and Alleghany and Conewango creek, on which there is no actual improvement made, nor any perſon reſiding, and which is claimed under any grant already iſſued from the Land-office, whether by warrant or patent granted under what is uſually called Prevention Certificates, and the owners or perſons claiming ſuch warrants or patents, ſhall on a certificate from the Commiſſioners to the Secretary of the Land-office ſtating that there is no improvement on the land, nor any perſon reſiding thereon, and that the original warrant deſcribes the ground with reaſonable certainty be entitled to receive a patent for ſuch tract of land upon the payment of four ſhillings and one penny half-penny or fifty-four and one-half cents per acre, contained in each ſurvey deducting however, the uſual allowance of ſix per cent for roads, which ſum in addition to the ſum paid at the time the warrant was iſſued will make three quarters of a dollar or ſeventy-five cents per acre, being the ſum originally paid by this State to the United States for the Triangle, together with lawful intereſt on the additional ſum of four ſhillings and one penny half-penny or fifty-four and one-half cents, from the third day of March one thouſand ſeven hundred and ninety-two, provided application be made for this purpoſe at the Land-office of Pennſylvania by ſuch warrant-holders or former patentees to take up ſuch vacant lands on or before the

day of one thouſand eight hundred and

Sec. V. *And be it further enacted by the authority aforeſaid*, That for each tract of land ſo certified and applied for under the directions and proviſions of the preſent act the Receiver-general of the Land-

office in his settlement of account for the same with the warrantee or patentee so applying, shall admit in payment all such sums as the said warrantee or patentee may have heretofore paid into the Land-office, in respect of tracts since granted to actual settlers, in consequence of such warrantee or patentee having failed in performing the requisite conditions of settlement, improvement and residence, necessary to vest and complete the title thereto, and the said Receiver-general shall also allow legal interest on so much of the sums so paid heretofore as aforesaid as he shall admit in his accounts under the directions of the present act.

Extracts from the Journals of the Senate.

Friday, February 25, 1803, p. 298.

On motion of Mr. Findley, seconded by Mr. M'Arthur,

Resolved, That the second reading and further consideration of the bill, entitled "An Act for ascertaining the rights and claims of actual settlers, and others, under the Act, entitled "An Act for the sale of the vacant lands within this Commonwealth," passed the 3d of April, 1792, be the order of the day for Tuesday the first of March.

Tuesday, March 1, 1803, p. 318.

According to the order of the day, the bill, entitled "An Act for ascertaining the rights and claims of actual settlers, and others, under the act, entitled "An Act for the sale of the vacant lands within this Commonwealth," passed the 3d of April, 1792, was read the second time.

Whereupon,

The Senate resolved itself into committee of the whole, (Mr. Rodman in the Chair) for the further consideration of the same, and

After some time spent therein.

The committee rose, and the Chairman reported the bill, with amendments, and the same was read as reported.

Wednesday, March 2, 1803, p. 322.

The bill, entitled "An Act for ascertaining the rights and claims of actual settlers, and others, under the act, entitled "An act for the sale of the vacant lands within this Commonwealth," passed the

3d of April, 1792, as reported yesterday, by committee of the whole was read the second time and considered by section.

Section I, being under consideration,

The Yeas and Nays on the question, on agreeing to the section, were called for by Mr. Jones, seconded by Mr. Barton, and on the question being put, the Members voted as follow, to wit:

YEAS.

Messrs. Findley, Hartzell, Heister, Kean, Lane, Lower, Lyle, M'Arthur, Mewhorter, Morton, Pearson, Piper, Porter, Richards, Rodman, Steele, Whitehill, Maclay, *Speaker*.—18.

NAYS.

Messrs. Barton, Ewing, Johnston, Jones.—4.

So it appeared that there were eighteen Yeas and four Nays, and that the question was determined in the affirmative.

The remaining sections, with the preamble and title, having been read and agreed to,

Ordered, That the said bill be transcribed for the third reading.

Thursday, March 3, 1803, p. 330.

The bill, entitled "An Act for ascertaining the rights and claims of actual settlers, and others, under the act, entitled "An Act for the sale of the vacant lands within this Commonwealth," passed the 3d of April, 1792, was read the third time.

Whereupon,

On the question, "Shall this bill pass?"

The Yeas and Nays were called for by Mr. Barton, seconded by Mr. Jones, and on the question being put, the Members voted as follow, to wit:

YEAS.

Messrs. Findley, Harris, Hartzell, Kean, Lane, Lower, Lyle, M'Arthur, Mewhorter, Pearson, Piper, Porter, Richards, Rodman, Steele, Whitehill, Maclay, *Speaker*.—17.

NAYS.

Messrs. Barton, Ewing, Johnston, Jones.—4.

So it appeared that there seventeen Yeas and four Nays, and that the question was determined in the affirmative.

Ordered, That the Clerk present the same to the House of Representatives for concurrence.

Extract from the Journal of the House of Representatives.

Saturday, March 12, 1803, p. 474.

Mr. Goodman preſented a memorial and remonſtrance from the Holland Land Company, ſtating, that certain intruders, under the title of actual ſettlers, have violated their engagements with the memorialiſts, and praying that this Houſe may permit the memorialiſts to be heard by Counſel at the Bar thereof, in order to explain circumſtances, which they conceive, render Legiſlative interference in the controverſy improper; and the ſaid memorial was read and

Ordered to be laid on the table.

To the Honorable the Senate, and Houſe of Repreſentatives of the Commonwealth of Pennſylvania.

The Memorial and Remonſtrance of the Holland Land Company by PAUL BUSTI their agent.

Reſpectfully sheweth,

THAT your memorialiſts have brought ſundry ejectments, which are now depending againſt certain intruders on their lands, ſituated north and weſt of the rivers Ohio and Alleghany, and weſt of Conewango creek, who have denominated themſelves actual ſettlers, and who with a view to the injury of your memorialiſts, have endeavoured to induce *the Legiſlature* to become *a party* to the controverſy. For this purpoſe theſe intruders with others, preſented divers memorials at the laſt ſeſſion of both Houſes, when your memorialiſts, finding it became the ſubject of Legiſlative diſcuſſion, alſo preſented memorials to inform them of the actual ſtate of the diſpute, and accompanied with documents to eſtabliſh the truth of the facts therein ſtated by your memorialiſts, all of which are on the files of your honourable Houſe, and to which your memorialiſts beg leave to refer.

Your memorialiſts although *foreigners*, and owing no *allegiance* to the State of Pennſylvania, yet having great confidence in the honor, faith and juſtice of the Commonwealth, in the due performance of her contracts, and more eſpecially as the people have in the 17th ſection of the ninth article of the conſtitution expreſſed their will, "That

no ex poſt facto law, nor any law *impairing contracts*, ſhall be made," purchaſed the lands ſituated as aforeſaid, which was ſold in purſuance of an act paſſed the 3d day of April 1792, and duly *paid at the ſame time*, the purchaſe money thereof, amounting to the ſum of *ninety-two thouſand, nine hundred and ſixty dollars* into the treaſury of the State.

An Indian war at that time raging, and the armed force of the Commonwealth, being inadequate to the effectual protection of the weſtern frontier, the deputy ſurveyors could not immediately locate the warrants. But as ſoon as the ſurveys could be completed, your memorialiſts proceeded at great expence, to tranſport proviſions and implements of huſbandry into that country, to eſtabliſh mills and ſtores, and to open roads to connect the ſettlements, and by large gratuities and liberal terms, to invite the emigration of perſons to ſettle and improve their lands. The effects produced upon the face of the country, in conſequence of theſe meaſures, were ſoon evident, and your memorialiſts can pride themſelves in the aſſertion, that no part of Pennſylvania, has heretofore ſo rapidly arrived from a ſtate of of wilderneſs, to the ſtate of improvement, which that part now exhibits: effects only to be produced, by the employment of a large capital combined with a ſyſtematic plan of ſettlement and improvement, ſteadily purſued, embracing a large diſtrict of country, and connecting all its parts; which capital can only be formed, by the union of individuals into companies. The inſulated ſettlements of individuals unconnected, and without money to make the eſtabliſhments, neceſſary for the ſupport and comfort of infant ſettlements, could not have produced them.

In December, 1797, after the expiration of the five years mentioned in the act of April, 1792, the Board of Property eſtabliſhed, on mature deliberation and conſultation with the Attorney General, the method to be obſerved in patenting lands purchaſed under this act, with which your memorialiſts ſtrictly conformed, and obtained patents from the Commonwealth for eight hundred and ſeventy-ſix tracts, praying thereon for ſurplus land, ſurveyed and returned, and in office fees, from which the ſtate derives a revenue, the further ſum of fourteen thouſand ſix hundred and fifty one dollars and thirty one cents. Some tracts remaining unpatented on account of errors in the ſurveys and interferences, your memorialiſts applied when they were corrected, to patent there alſo, when the ſecretary of the land office, then in office, refuſed to grant them, and the Supreme Court was applied to for a mandamus to compel him. After the caſe was fully argued, the judges delivered their opinions at length, upon the ſtate of title to theſe tracts, and explicitly declared that the act of April, 1792, was a ſolemn contract between the Commonwealth and the purchaſers under it. With the courts of juſtice, as the conſtitutional expounders of the laws, your memorialiſts were ſatisfied to leave the ultimate ſettlement of the controverſy, and had entertained the hope, that the courts would be permitted to exerciſe their jurisdic-

tion uncontrouled. Unfortunately a ſet of lawleſs intruders, a number of whom had been fed by the bounty of your memorialiſts, and were under ſolemn engagements to ſettle and improve their lands, endeavoured under a forced conſtruction of the act of April, 1792, to inculcate the opinion, that your memorialiſts had forfeited their lands, and in open violation of their engagements with your memorialiſts, kept poſſeſſion for their own uſe under the aſſumed title of "*actual ſettlers*," of thoſe very tracts, for which they had entered into articles of ſettlement, and invited others to enter on and hold in like manner, all tracts they could take poſſeſſion of. Thoſe perſons had the aſſurance to repreſent to the Legiſlature of laſt year, in a number of petitions preſented by them, a variety of particulars falſe in fact, and to requeſt a Legiſlative interference in their favour. Upon this your memorialiſts thought it their duty to appriſe the Legiſlature, of the actual ſtate of the controverſy, and preſented their memorials as aforeſaid, ſtating the nature and circumſtances of the caſe, and alſo *inſiſting* that the act of the 3d of April, 1792, being *a contract and the State a party to it*, the conſtruction muſt reſt with the courts, and not with the Legiſlature; and they annexed to their memorial, copies of the opinions of the judges of the ſupreme court, certified by them to be as delivered in the caſe of the mandamus aforeſaid, all which are on file among the papers of your honourable Houſe, and to which your memorialiſts again beg leave to refer.

Notwithſtanding this, an act was paſſed dated the 2d of April, 1802, in which it was among other things ſtated, that your memorialiſts requeſted the Legiſlature to interfere, when in fact the ſaid memorials, *moſt expreſsly* declare that the Legiſlature ought not, and cannot conſtitutionally interfere in the caſe, and entreat them not to interfere or take any part in the controverſy. And the ſaid act further directed the judges of the Supreme Court, to hold a court at Sunbury, for the *excluſive* purpoſe of deciding on *two queſtions* ſtated in the act, neither of which embrace the full ſcope of the controverſy. The act alſo evidently appeared to *deſign*, that the *points of law* ariſing in the caſe, ſhould be drawn *from the juriſdiction of the court*, to the *deciſion of a jury*. Your memorialiſts while this law was on its paſſage through both Houſes, preſented a memorial to each Houſe, requeſting to be heard by counſel, at the bar of the Houſe againſt the paſſing of it, but the requeſt was refuſed.

Your memorialiſts, therefore, conſidering that the Legiſlature had undertaken *unconſtitionally* to expound the act of the 3d April, 1792, and to make the State a party—that the court was to be held at Sunbury, *remote from the ſeat of government and the land office, acceſs to which during the trial would be barred in conſequence*—in a *county* from which the *principal emigration* into *that country had iſſued*—and of courſe *more connected in intereſt and relationſhip with theſe intruders* than any other county in the State; that the queſtions were *partially* ſtated, and could not decide the controverſy, conſulted their counſel on the

propriety of appearing as ſuitors in the trial to be held at Sunbury, who adviſed your memorialiſts to decline the juriſdiction eſtabliſhed by the act of April, 1802.

That this proceeding might not appear diſreſpectful to the court, or their motives be miſunderſtood, they requeſted their counſel to addreſs a letter to the judges ſtating the reaſon inducing your memorialiſts to decline the juriſdiction, a copy of which letter is hereunto annexed. (*a*)

Your memorialiſts *recollecting* they were *Aliens* and being in a meaſure *baniſhed by the Legiſlature* from the *State Courts*, though themſelves as *Aliens* entitled to the *protection* of the *General Government*, and have accordingly brought ejectments againſt the leading intruders, in the Circuit Court of the United States.

Your memorialiſts beg leave further to mention that the judges met at Sunbury, in the month of November laſt, and on the 26th of that month delivered a charge to a jury, impannelled under a *feigned iſſue*, formed in purſuance of the act of April, 1802, in which charge the opinion of the court is fully expreſſed. Your memorialiſts have annexed a copy of this charge to their memorial. (*b*) No appearance being entered to the ſuit on the part of the warrant holders or patentees, under the act of April, 1792, and the judgment of the court being entered, *ſubject to the proviſo contained in the 9th ſection of that act* the controverſy remains, as your memorialiſts are adviſed, on the ſame footing as it did prior to the ſeſſion at Sunbury.

Appearances being entered to the ejectments brought in the Circuit Court, to October ſeſſions laſt, and of courſe, the cauſes depending there, your memorialiſts had hoped there would be no further obſtacles to oppoſe a fair and impartial trial in that court.—In this, however, they are diſappointed, and extremely regret to find a bill No. 62, originating in the Senate, and at this time on its paſſage through the Houſe of Repreſentatives, has again brought the ſubject before the Legiſlature.—In this bill your memorialiſts are denounced "*as improperly drawing the controverſy before the Federal Courts*" and the ſame is declared "*an indecent, contemptuous and unfair proceeding*" on the part of your memorialiſts, "inaſmuch as the "*interference* of the Legiſlature of Pennſylvania, in appointing and "directing the judges of the ſupreme court ſo to meet at Sunbury, "was had and made in conſequence of the *preſſing ſolicitations of all* "*parties* intereſted in the controverſy, *as well of the Holland and Po*"*pulation Companies*, as of the actual ſettlers, manifeſted by their "repeated petitions and repreſentations to this purpoſe and *praying* "*for the interference of the Legiſlature of this Commonwealth*, in the

(a) Vide ante p. 105.

(b) Ante p. 107.

" ſettlement of the diſpute between them, reſpecting the lands afore-
" ſaid."

Your memorialiſts ſuppoſing that a ſilent acquieſcence on their part, might induce the world to ſuppoſe that they had requeſted the Legiſlature to interfere in the diſpute, with all due ſubmiſſion to your honourable Houſe, remonſtrate againſt the above ſtatement, which they have copied from the preamble of the above bill No. 62, now depending, as being *unfounded* and *contrary* to fact, and entreat that a reference may be had to the memorials aforeſaid, on file with your clerk, whereby it will appear that your memorialiſts have always remonſtrated againſt any interference of the Legiſlature on this ſubject.

To convince your honourable Houſe that your memorialiſts have been ſtrenuouſly engaged in the ſettlement and improvement of their lands in the weſtern parts of the ſtate, they beg leave to add a ſtatement of their expences, in the purchaſe, improvement and patenting theſe lands, by which it will appear that the State of Pennſylvania has never by any other ſale derived ſo much benefit when it is conſidered in relation to the amount paid into the treaſury, expended in the improvement of the country—and to the ſpring and effect given to individual exertion and enterpriſe, by the circulation of ſo much money in that part of the ſtate where, prior to the purchaſe, a circulating medium was ſcarcely known.

	Dollars.
Amount of purchaſe money paid by your memorialiſts to the ſtate, for the warrants in Auguſt, 1793,	92960 82
Land Office fees on ditto.	4802
Fees on patenting 876 tracts paid at the Land Office in 1799,	14651 31
Expended in the ſettlement and improvement of the lands, building mills, ſtores, opening roads, agents and incidental expences from 1794, to 1ſt January 1802,	306476 17
	418890 30

Amounting in the whole, to four hundred eighteen thouſand eight hundred and ninety dollars and thirty cents.

Your memorialiſts therefore, pray that your honourable Houſe will on due conſideration of the premiſes permit your memorialiſts to be heard by counſel at the bar of the Houſe, to enable them further to ſtate and to explain the circumſtances of this caſe, which render it improper for the Legiſlature to interfere in the controverſy.

PAUL BUSTI,
Agent for the Holland Land Company.

Philadelphia, March 5, 1803.

Extracts from the Journal of the House of Representatives.

Tuesday, March 15, 1803, p. 487.

On motion of Mr. Franklin, seconded by Mr. M'Elroy,

The memorial, &c. of the Holland Land Company, praying to be heard at the Bar of this House by Counsel, read the 12th instant, was read the second time, and referred to Messrs. Porter, Evans, Patterson, J. Montgomery and Agnew, to consider and report thereon.

Thursday, March 24, 1803, p. 569.

Mr. Porter from the committee appointed the 15th instant, on the memorial and remonstrance of the Holland Land Company, on the subject of the bill, entitled "An Act for ascertaining the rights and claims of actual settlers, and others, under the act, entitled "An Act for the sale of vacant lands within this Commonwealth, passed the 3d day of April, 1792, made report, which was read as follows, to wit:

That they have considered the subject referred to them, and on the most mature deliberation, are of opinion, that the Courts of Justice are the proper tribunals to decide on the claims of the parties under the aforesaid law: Under those impressions, the committee submit the following resolutions, to wit:

Resolved, That it is inexpedient for the Legislature to interfere in the dispute now pending between the warrantees and actual settlers on the north and west of the rivers Ohio and Alleghany and Conewango creek.

Resolved, That it is inexpedient to hear Counsel at the Bar of this House on the foregoing subject.

Ordered to be laid on the table.

Wednesday, March 30, 1803, p. 620.

On motion of Mr. Porter, seconded by Mr. Brady,

The report of the committee on the memorial of the Holland Land Company, read the 24th instant, was read the second time.

And the first resolution being under consideration,

On the queſtion, "Will the Houſe agree to the ſame?"

The Yeas and Nays were called for by Mr. Porter and Mr. Franklin, and are as follow, to wit:

YEAS.

Meſſrs. Adcock, Brodhead, Cooke, Eichelberger, Evans, Ferguſon, Franklin, Goodman, Helman, A. Miller, W. Miller, Pearſon, Porter, Potts, Pugh, Reily, Roberts, Simpſon, Slagle, B. H. Smith, J. Smith, C. Snyder, Udree, Welles.—24.

NAYS.

Meſſrs. Agnew, Alexander, Alſhouſe, Alter, Anderſon, Brady, Bright, Briſben, Cunningham, Darlington, M. Davis, I. Davis, Engle, Ewalt, Ferree, Follmer, Hall, Harriſon, Henderſon, Holgate, Kerr, Laycock, Lytle, Marſhall, M'Farlane, M'Maſters, Mitchel, Mohler, J. Montgomery, Moore, Neuhardt, Patterſon, Peebles, Poe, Roſe, S. Smith, Statler, Steele, Stouffer, Taylor, Trevor, Turbett, Vance, Weirich, J. Wilſon, W. Wilſon, Witman, Snyder, *Speaker*.—48.

So it was determined in the negative.

Monday, April 23, 1803, p. 663.

Reaſons of the underſigned for voting for the reſolution under conſideration of the Houſe, on the 30th of March laſt; which reſolution had for its object the rejection of the bill from the Senate, entitled "An Act for aſcertaining the rights and claims of actual ſettlers and others, under the act, entitled "An Act for the ſale of vacant lands within this Commonwealth," paſſed the 3d day of April, 1792.

1. Becauſe, that as the 17th ſection of the 9th article of the Conſtitution of this Commonwealth declares, that no *expoſt facto* law, nor any law impairing contracts, ſhall be made; and the Judges of the Supreme Court, after ſolemn argument, have decided, that the Act to which this is in fact a Supplement, is a contract between the State and the claimants under it; and this deciſion has been duly certified and read in this Houſe. We are of opinion that this bill, which is a Legiſlative expoſition of the ſaid Act of April, 1792, in favour of one deſcription of claimants under it to the prejudice of another, is unconſtitutional and void, and that conſiſtently with our oaths to ſupport that Conſtitution, we are bound to vote againſt it.

2. Becauſe, that as the expoſition of contract between citizen and citizens, between citizens and foreigners, and between the State and her citizens, and others, is matter of judicial cognizance exclu-

ſively; it is more particularly incumbent on the Legiſlature, in the preſent caſe, where the Commonwealth is a contracting party, and has received upwards of 400,000 dollars conſideration money, in the ſale of lands under that act, to be ſilent, and not to interfere in the conſtruction of it, but to permit the ſame to remain with the Courts of Juſtice.

3. Becauſe, the bill diſhonors the Legiſlature by falſe aſſertions in particulars eaſily detected by documents of as much notoriety and as readily referred to as the bill itſelf. Among others are: 1. The partial ſtatement of the proceedings of the Court at Sunbury, and the declaration that thoſe proceedings eſtabliſhed a general principle with reſpect to the validity of grants under the Act of April, 1792, when by referring to thoſe proceedings, it appears that no principle was eſtabliſhed, as the judgment was entered, ſubject to the proviſo contained in the ninth ſection of that act. 2. That the Holland Company had repeatedly ſolicited the interpoſition of the Legiſlature in ſettling the controverſy; when on the contrary, it appears by numerous documents on the files of this Houſe, that they had remonſtrated in the ſtrongeſt and moſt pointed terms againſt the Legiſlatures intermedling at all in the controverſy, contending that it was not of legiſlative but judicial cognizance only. 3. That although there is not a ſingle depoſition or evidence of any kind before the Houſe relative to the ſtate of the country over the Ohio; yet this bill inſinuates that there is a *maſs of evidence* now before us upon that ſubject, and upon which the bill itſelf is founded.

4. Becauſe, that the queſtions as to the juriſdiction of the Federal Courts, muſt be determined by the Courts themſelves, under the ſound conſtruction of the Conſtitution of the United States, which is the ſupreme law of the land. The declarations in the bill are hoſtile to the peace and harmony of the Union, by unneceſſarily interfering in a caſe provided for by the Conſtitution.

5. Becauſe, this bill is highly diſhonorable to the Legiſlature of a free people, by throwing the weight of Legiſlative influence on one ſide of a controverſy, now depending and in diſcuſſion in the Courts of Juſtice, tending to overawe the Courts in the due adminiſtration of juſtice, is a violation of public faith and honor, and deſtructive of all confidence in public contracts.

For the foregoing and other reaſons, we do proteſt againſt all proceedings in favor of the paſſage of the bill above recited.

Benjamin H. Smith, Roſewell Welles, Stacy Pott's, Henry Slagle, William Miller, Adam Miller, John Roberts, John Franklin, Cadwallader, Evans, jun.

April 2, 1803.

Page 699.

Reply to the Proteſt or Diſſent of Benjamin H. Smith and others, entered on the minutes of this day

Whereas the reaſons offered in writing, by a part of the minority, for voting for the reſolution under conſideration of the Houſe, on the thirtieth of March laſt, which reſolution, as it alledged, had for its object the rejection of the bill from the Senate, entitled "An act for aſcertaining the rights of actual ſettlers and others, under the act for the ſale of vacant lands within this Commonwealth," paſſed the third day of April, one thouſand ſeven hundred and ninety-two, apply almoſt excluſively againſt the paſſage of that bill, on the principles of which this Houſe has yet expreſſed no opinion. Of whatever force thoſe reaſons may be in oppoſition to the bill, whenever it ſhall be taken up for conſideration, at preſent they do not appear to be well-timed. Nor can it be ſafely inferred, as they ſeem ſtrongly to inſinuate, that thoſe who voted againſt that reſolution, would have adopted the principles contained in the bill. For to vote againſt the reſolution was one thing; but to adopt the bill without modification, would have been another widely different. The aforeſaid reaſons, therefore appear to the underſigned irrelevant to any vote of this Houſe, on the ſubject of the aforeſaid bill.

James Wilſon, James Patterſon, William Steele, Jeſſe Moore, Iſaac Ferree, John M'Maſters, William Briſben, Samuel Ewalt, Jacob Holgate, Simon Snyder, James Engle, Henry Allſhouſe, William Wilſon, Gabriel Hieſter, James Montgomery, Methuſelah Davis, James Lerr, Samuel Trevor, John Marſhal, John Harriſon, Joſeph Vance, James Poe, John Cunningham, James M'Farlane, John Lytle, jun. Thomas Turbett, David Mitchel, James Fulton, Abner Laycock.

The Houſe took no further notice of the bill during the Seſſion.

FINIS.

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